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(Original Signature of Member)

112TH CONGRESS  
2D SESSION

**H. R.**

To enact certain laws relating to small business as title 53, United States Code, “Small Business”.

IN THE HOUSE OF REPRESENTATIVES

, 2012

Mr. SMITH of Texas (for himself and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To enact certain laws relating to small business as title 53, United States Code, “Small Business”.

1 *Be it enacted by the Senate and House of Representatives of the United*  
2 *States of America in Congress assembled,*

3 **SECTION 1. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

- Sec. 1. Table of contents.
- Sec. 2. Purpose; conformity with original intent.
- Sec. 3. Enactment of title 53, United States Code.
- Sec. 4. Transitional and savings provisions.
- Sec. 5. Repeals.

5 **SEC. 2. PURPOSE; CONFORMITY WITH ORIGINAL INTENT.**

6 (a) PURPOSE.—The purpose of this Act is to codify certain existing laws  
7 relating to small business as a positive law title of the United States Code.

8 (b) CONFORMITY WITH ORIGINAL INTENT.—In the codification of laws  
9 by this Act, the intent is to conform to the understood policy, intent, and  
10 purpose of Congress in the original enactments, with such amendments and

1 corrections as will remove ambiguities, contradictions, and other imperfec-  
 2 tions, in accordance with section 205(c) of House Resolution No. 988, 93d  
 3 Congress, as enacted into law by Public Law 93–554 (2 U.S.C. 285b).

4 **SEC. 3. ENACTMENT OF TITLE 53, UNITED STATES CODE.**

5 Title 53, United States Code, “Small Business”, is enacted as follows:

6 **TITLE 53—SMALL BUSINESS**

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1                                   **Subtitle I—General Provisions**  
2                           **Chapter 101—Declarations; Definitions;**  
3                           **Small Business Concerns**

- Sec.  
101101. Declarations.  
101102. Definitions.  
101103. Small business concerns.

4       **§ 101101. Declarations**

- 5           (a) IN GENERAL.—
- 6               (1) FREE COMPETITION.—The essence of the American economic  
7               system of private enterprise is free competition. Only through full and  
8               free competition can free markets, free entry into business, and oppor-  
9               tunities for the expression and growth of personal initiative and individ-  
10              ual judgment be assured. The preservation and expansion of such com-  
11              petition is basic not only to the economic well-being but to the security  
12              of this Nation. National security and well-being cannot be realized un-  
13              less the actual and potential capacity of small business is encouraged  
14              and developed.
- 15              (2) POLICY.—It is the policy of Congress that the Government  
16              should aid, counsel, assist, and protect, insofar as is possible, the inter-  
17              ests of small business concerns in order to—
- 18                   (A) preserve free competitive enterprise;
- 19                   (B) ensure that a fair proportion of the total purchases and  
20                   contracts or subcontracts for property and services for the Govern-  
21                   ment (including contracts or subcontracts for maintenance, repair,  
22                   and construction) be placed with small business concerns;
- 23                   (C) ensure that a fair proportion of the total sales of Govern-  
24                   ment property be made to small business concerns; and

1 (D) maintain and strengthen the overall economy of the Nation.

2 (b) INTERNATIONAL TRADE.—

3 (1) POLICY.—It is the policy of Congress that the Federal Govern-  
4 ment, through the Administrator, acting through the Associate Admin-  
5 istrator for International Trade and in cooperation with the Depart-  
6 ment of Commerce and other relevant State and Federal agencies,  
7 should assist small businesses to increase their ability to compete in  
8 international markets by—

9 (A) enhancing their ability to export;

10 (B) facilitating technology transfers;

11 (C) enhancing their ability to compete effectively and efficiently  
12 against imports;

13 (D) increasing the access of small business concerns to long-  
14 term capital for the purchase of new plant and equipment used in  
15 the production of goods and services involved in international  
16 trade;

17 (E) disseminating information concerning State, Federal, and  
18 private programs and initiatives to enhance the ability of small  
19 business concerns to compete in international markets; and

20 (F) ensuring that the interests of small business concerns are  
21 adequately represented in bilateral and multilateral trade negotia-  
22 tions.

23 (2) RESPECTIVE AGENCY ROLES.—Congress recognizes that the De-  
24 partment of Commerce is the principal Federal agency for trade devel-  
25 opment and export promotion and that the Department of Commerce  
26 and the Small Business Administration work together to advance joint  
27 interests. It is the purpose of this subtitle and subtitle II to enhance,  
28 not alter, their respective roles.

29 (c) AGRICULTURE AND RELATED INDUSTRIES.—It is the policy of Con-  
30 gress that the Government, through the Small Business Administration,  
31 should assist small business concerns that are engaged in—

32 (1) the production of food and fiber;

33 (2) ranching;

34 (3) raising of livestock;

35 (4) aquaculture; or

36 (5) any other industry relating to agriculture.

37 (d) BUSINESS DEVELOPMENT PROGRAM.—

38 (1) 1978.—

39 (A) FINDINGS.—With respect to the business development pro-  
40 gram, Congress finds that—

1 (i)(I) ownership and control of productive capital is con-  
2 centrated in the economy of the United States; and

3 (II) certain groups, therefore, own and control little pro-  
4 ductive capital;

5 (ii) certain groups in the United States own and control lit-  
6 tle productive capital because they have limited opportunities  
7 for small business ownership;

8 (iii) the broadening of small business ownership among  
9 groups that, on October 24, 1978, owned and controlled little  
10 productive capital is essential to provide for the well-being of  
11 this Nation by promoting their increased participation in the  
12 free enterprise system of the United States;

13 (iv) such development of business ownership among groups  
14 that, on October 24, 1978, owned and controlled little produc-  
15 tive capital will be greatly facilitated through the creation of  
16 a small business ownership development program, which shall  
17 provide services including financial, management, and tech-  
18 nical assistance;

19 (v) the power to let Federal contracts under the business  
20 development program can be an effective procurement assist-  
21 ance tool for development of business ownership among  
22 groups that own and control little productive capital;

23 (vi) the opportunity for full participation in our free enter-  
24 prise system by socially and economically disadvantaged per-  
25 sons is essential if we are to obtain social and economic  
26 equality for such persons and improve the functioning of our  
27 national economy;

28 (vii) many such persons are socially disadvantaged because  
29 of their identification as members of certain groups that have  
30 suffered the effects of discriminatory practices or similar in-  
31 vidious circumstances over which they have no control;

32 (viii) those groups include Black Americans, Hispanic  
33 Americans, Native Americans, Indian tribes, Asian Pacific  
34 Americans, Native Hawaiian Organizations, and other minori-  
35 ties;

36 (ix) it is in the national interest to expeditiously ameliorate  
37 the conditions of socially and economically disadvantaged  
38 groups;

39 (x) those conditions can be improved by providing the max-  
40 imum practicable opportunity for the development of small

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business concerns owned by members of socially and economically disadvantaged groups;

(xi) that development can be materially advanced through the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from those concerns; and

(xii) those procurements also benefit the United States by encouraging the expansion of suppliers for the procurements, thereby encouraging competition among the suppliers and promoting economy in the procurements.

(B) PURPOSE.—The purpose of the business development program is to—

(i) foster business firm ownership and development by individuals in groups that own and control little productive capital;

(ii) promote the competitive viability of those firms in the marketplace by providing such available financial, technical, and management assistance as may be necessary;

(iii) promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that those concerns can compete on an equal basis in the American economy;

(iv) promote the competitive viability of those concerns in the marketplace by providing such available contract, financial, technical, and management assistance as may be necessary; and

(v) clarify and expand the program for the procurement by the United States of articles, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

(2) 1988.—

(A) FINDINGS.—Congress finds that—

(i) the business development program and the award of contracts under chapter 233 remain a primary tool for improving opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals in the Federal procurement process and bringing those concerns into the Nation's economic mainstream;

(ii) although some progress has resulted from the business development program, it has generally failed to meet its ob-

1 jectives, which remain as valid on November 15, 1988, as  
2 when the program was initiated;

3 (iii) too few concerns that have exited the business develop-  
4 ment program have been prepared to compete successfully in  
5 the open marketplace on competitive procurements, and many  
6 concerns have developed an unhealthy dependency on sole-  
7 source contracts by the time the concerns are required to  
8 leave the program;

9 (iv) the application and certification process for admitting  
10 new participants to the business development program is inor-  
11 dinately lengthy and burdensome;

12 (v) the Administrator has often not efficiently and equi-  
13 tably administered and managed the business development  
14 program in a manner that provided clear lines of responsibil-  
15 ity for implementing and monitoring many of the administra-  
16 tive duties under the program;

17 (vi) the Administrator and some program participants have  
18 given insufficient attention and support to the business devel-  
19 opment goals of the business development program and in-  
20 stead have focused almost entirely on the size of contract  
21 awards or the number of concerns certified to participate in  
22 the program;

23 (vii) many Federal procuring agencies have failed to iden-  
24 tify and offer the amount of contract support necessary to  
25 allow for diversification and growth of disadvantaged busi-  
26 nesses participating in the business development program;

27 (ix) contract support and business development expenses  
28 have been misused by both the Administrator and partici-  
29 pants in the business development program and have not been  
30 equitably distributed pursuant to objective criteria;

31 (x) the widespread perception of undue political influence  
32 in the operation and administration of the business develop-  
33 ment program has significantly contributed to the program's  
34 poor image and has deterred utilization of the program by so-  
35 cially and economically disadvantaged concerns and by Fed-  
36 eral procuring agencies; and

37 (xi) it is imperative that increased competition and other  
38 substantial reforms be accomplished in the business develop-  
39 ment program to promote the Congressionally mandated busi-  
40 ness development objectives and purposes.

(B) PURPOSES.—The purposes of Public Law 100–656 (102 Stat. 3853) are—

(i) to affirm that the business development program and chapter 233 shall be used exclusively for business development purposes to help small businesses owned and controlled by socially and economically disadvantaged individuals compete on an equal basis in the mainstream of the American economy;

(ii) to affirm that the measure of success of the business development program, including the authority under chapter 233, shall be the number of competitive firms that—

(I) exit the business development program without being unreasonably reliant on contracts under chapter 233; and

(II) are able to compete on an equal basis in the mainstream of the American economy;

(iii) to ensure that program benefits accrue to individuals who are both socially and economically disadvantaged;

(iv) to increase the number of small businesses owned and controlled by socially and economically disadvantaged individuals from which the United States may purchase products and services (including construction work); and

(v) to ensure integrity, competence, and efficiency in the administration of business development services and the Federal contracting opportunities made available to small business concerns owned and controlled by socially and economically disadvantaged individuals.

(e) VICTIMS OF FLOODS AND OTHER CATASTROPHES; SMALL BUSINESS CONCERNS THAT ARE DISPLACED AS A RESULT OF FEDERALLY AIDED CONSTRUCTION PROGRAMS.—It is the policy of Congress that the Government should assist—

(1) victims of floods and other catastrophes; and

(2) small business concerns that are displaced as a result of federally aided construction programs.

(f) WOMEN’S BUSINESS OWNERSHIP.—

(1) FINDINGS.—With respect to the programs and activities authorized by this subtitle and subtitle II, Congress finds that—

(A) women-owned business has become a major contributor to the American economy by providing goods and services, revenues, and jobs;



(B) over the 2 decades preceding October 25, 1988, there were substantial gains in the social and economic status of women as women sought economic equality and independence;

(C) despite that progress, women, as a group, are subjected to discrimination in entrepreneurial endeavors due to their gender;

(D) that discrimination takes many overt and subtle forms having an adverse impact on the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;

(E) it is in the national interest to expeditiously remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women;

(F) the removal of those barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and to further increase the economic vitality of the Nation;

(G) increased numbers of small business concerns owned and controlled by women will directly benefit the United States Government by expanding the potential number of suppliers of goods and services to the Government; and

(H) programs and activities designed to assist small business concerns owned and controlled by women must be implemented in such a way as to remove those discriminatory barriers while not adversely affecting the rights of socially and economically disadvantaged individuals.

(2) PURPOSE.—The purpose of the programs and activities conducted under this subtitle and subtitle II that assist women entrepreneurs is to—

(A) vigorously promote the legitimate interests of small business concerns owned and controlled by women;

(B) remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production; and

(C) require that—

(i) the Government engage in a systematic and sustained effort to identify, define, and analyze the discriminatory barriers facing women; and

(ii) that effort directly involve the participation of women business owners in the public/private sector partnership.

(g) SUBCONTRACTING.—

(1) PARTICIPATION IN PERFORMANCE OF CONTRACTS.—It is the policy of the United States that qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled

1 veterans, small business concerns owned and controlled by socially and  
2 economically disadvantaged individuals, small business concerns owned  
3 and controlled by veterans, small business concerns owned and con-  
4 trolled by women, and other small business concerns shall have the  
5 maximum practicable opportunity to participate in the performance of  
6 contracts let by any Federal agency (including contracts and sub-  
7 contracts for subsystems, assemblies, components, and related services  
8 for major systems).

9 (2) TIMELY PAYMENT OF AMOUNTS DUE.—It is the policy of the  
10 United States that its prime contractors establish procedures to ensure  
11 the timely payment of amounts due pursuant to the terms of their sub-  
12 contracts with qualified HUBZone small business concerns, small busi-  
13 ness concerns owned and controlled by service-disabled veterans, small  
14 business concerns owned and controlled by socially and economically  
15 disadvantaged individuals, small business concerns owned and con-  
16 trolled by veterans, small business concerns owned and controlled by  
17 women, and other small business concerns.

18 (h) RESEARCH AND DEVELOPMENT.—Research and development are  
19 major factors in the growth and progress of industry and the national econ-  
20 omy. The expense of carrying on research and development programs is be-  
21 yond the means of many small business concerns, and small business con-  
22 cerns are handicapped in obtaining the benefits of research and development  
23 programs conducted at Government expense. Small business concerns are  
24 thereby placed at a competitive disadvantage. This weakens the competitive  
25 free enterprise system and prevents the orderly development of the national  
26 economy. It is the policy of Congress that assistance be given to small busi-  
27 ness concerns to enable small business concerns to undertake and to obtain  
28 the benefits of research and development in order to maintain and strength-  
29 en the competitive free enterprise system and the national economy.

30 (i) MENTORING NETWORKS.—Congress finds that—

31 (1) the SBIR program and STTR program create jobs, increase ca-  
32 pacity for technological innovation, and boost international competitive-  
33 ness;

34 (2) increasing the quantity of applications from all States to the  
35 SBIR program and STTR program would enhance competition for  
36 awards under the FAST program and the quality of the completed  
37 projects; and

38 (3) mentoring is a natural complement to the FAST program of  
39 reaching out to new companies regarding the SBIR program and  
40 STTR program as an effective and low cost way to improve the likeli-

1           hood that the companies will succeed in the SBIR program and STTR  
2           program in developing and commercializing their research.

3           (j) INTEREST RATES CHARGED BY SMALL BUSINESS INVESTMENT COM-  
4 PANIES.—The purpose of section 303.112 of this title is to facilitate the or-  
5 derly and necessary flow of long-term loans and equity funds from small  
6 business investment companies to small business concerns.

7           (k) SBIR PROGRAMS.—

8           (1) 1982 FINDINGS AND PURPOSES.—

9           (A) FINDINGS.—Congress finds that—

10           (i) technological innovation—

11               (I) creates jobs;

12               (II) increases productivity, competition, and economic  
13 growth; and

14               (III) is a valuable counterforce to inflation and the  
15 United States balance-of-payments deficit;

16           (ii) while small business is the principal source of signifi-  
17 cant innovations in the Nation, the vast majority of federally  
18 funded research and development is conducted by large busi-  
19 nesses, universities, and Government laboratories; and

20           (iii) small businesses—

21               (I) are among the most cost-effective performers of re-  
22 search and development; and

23               (II) are particularly capable of developing research  
24 and development results into new products.

25           (B) PURPOSES.—The purposes of Public Law 97–219 (96 Stat.  
26 217) are—

27           (i) to stimulate technological innovation;

28           (ii) to use small business to meet Federal research and de-  
29 velopment needs;

30           (iii) to foster and encourage participation by minority and  
31 disadvantaged persons in technological innovation; and

32           (iv) to increase private sector commercialization innovations  
33 derived from Federal research and development.

34           (2) 1992 FINDINGS AND PURPOSES.—

35           (A) FINDINGS.—Congress finds that—

36           (i) the SBIR programs have been a successful method of  
37 involving small business concerns in Federal research and de-  
38 velopment;

39           (ii) the SBIR programs have been an effective catalyst for  
40 the development of technological innovations by small busi-  
41 ness concerns;

(iii) SBIR program participants have provided high quality research and development in a cost-effective manner;

(iv) the innovative products and services developed by small business concerns participating in SBIR programs have been important to the national defense and to the missions of the other participating Federal agencies;

(v) SBIR programs have effectively stimulated the commercialization of technology developed through Federal research and development, benefiting the public and private sectors of the Nation;

(vi) by encouraging the development and commercialization of technological innovations, the SBIR program have created jobs, expanded business opportunities for small firms, stimulated the development of new products and services, and improved the competitiveness of the Nation's high technology industries;

(vii) SBIR programs have helped increase exports from small business concerns;

(viii) despite the general success of the SBIR programs, the proportion of Federal research and development funds received by small business concerns has not increased over the life of the programs, but has remained at 3 percent; and

(ix) although the participating Federal agencies have successfully implemented most aspects of the SBIR programs, additional outreach efforts are necessary to stimulate increased participation of socially and economically disadvantaged small business concerns.

(B) PURPOSES.—The purposes of title I of Public Law 102–564 (106 Stat. 4249) are—

(i) to expand and improve the SBIR programs;

(ii) to emphasize the SBIR programs' goal of increasing private sector commercialization of technology developed through Federal research and development;

(iii) to increase small business participation in Federal research and development; and

(iv) to improve the Federal Government's dissemination of information concerning the SBIR programs, particularly with regard to program participation by small business concerns owned and controlled by women and by small business concerns owned and controlled by socially and economically disadvantaged individuals.

(3) 2000 FINDINGS.—Congress finds that—

(A) SBIR programs are highly successful in involving small businesses in federally funded research and development;

(B) SBIR programs made the cost-effective and unique research and development capabilities possessed by the small businesses of the Nation available to Federal agencies;

(C) the innovative goods and services developed by small businesses that participated in SBIR programs have produced innovations of critical importance in a wide variety of high-technology fields, including biology, medicine, education, and defense;

(D) SBIR programs are a catalyst in—

(i) the promotion of research and development;

(ii) the commercialization of innovative technology;

(iii) the development of new products and services; and

(iv) the continued excellence of the Nation's high-technology industries; and

(E) the continuation of SBIR programs will—

(i) provide expanded opportunities for 1 of the Nation's vital resources, its small businesses;

(ii) foster invention, research, and technology;

(iii) create jobs; and

(iv) increase this Nation's competitiveness in international markets.

#### **§ 101102. Definitions**

In this title:

(1) ACCREDITED LENDERS PROGRAM.—The term “accredited lenders program” means the program under section 331107 of this title.

(2) ACTIVATED.—The term “activated”, with respect to a reservist, means having received an order placing the reservist on active duty.

(3) ACTIVE DUTY.—The term “active duty” has the meaning given the term in section 101 of title 10.

(4) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Small Business Administration.

(5) AGRICULTURAL COMMODITY.—The term “agricultural commodity” has the meaning given the term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

(6) AGRICULTURAL ENTERPRISE.—The term “agricultural enterprise” means a business engaged in—

(A) the production of food or fiber;

(B) ranching;

(C) raising of livestock;

1 (D) aquaculture; or

2 (E) any other industry related to agriculture.

3 (7) ALASKA NATIVE CORPORATION.—The term “Alaska Native Cor-  
4 poration” has the meaning given the term “Native Corporation” in sec-  
5 tion 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

6 (8) ALASKA NATIVE VILLAGE.—The term “Alaska Native Village”  
7 has the meaning given the term “Native village” in section 3 of the  
8 Alaska Native Claims Settlement Act (43 U.S.C. 1602).

9 (9) ASSOCIATION.—The term “Association” means the association of  
10 small business development centers recognized under section 271102(f)  
11 of this title.

12 (10) BASE CLOSURE AREA.—The term “base closure area” has the  
13 meaning given the term in section 253101 of this title.

14 (11) BIOMASS.—

15 (A) IN GENERAL.—The term “biomass” means any organic ma-  
16 terial that is available on a renewable or recurring basis.

17 (B) INCLUSIONS.—The term “biomass” includes—

18 (i) agricultural crops;

19 (ii) trees grown for energy production;

20 (iii) wood waste and wood residues;

21 (iv) plants (including aquatic plants and grasses);

22 (v) residues;

23 (vi) fibers;

24 (vii) animal wastes and other waste materials; and

25 (viii) fats, oils, and greases (including recycled fats, oils,  
26 and greases).

27 (C) EXCLUSIONS.—The term “biomass” does not include—

28 (i) paper that is commonly recycled; or

29 (ii) unsegregated solid waste.

30 (12) BUNDLED CONTRACT.—The term “bundled contract” means a  
31 contract that is entered into to meet requirements that are consolidated  
32 in a bundling of contract requirements.

33 (13) BUNDLING OF CONTRACT REQUIREMENTS.—

34 (A) IN GENERAL.—The term “bundling of contract require-  
35 ments” means consolidating 2 or more procurement requirements  
36 for goods or services previously provided or performed under sepa-  
37 rate smaller contracts into a solicitation of offers for a single con-  
38 tract that is likely to be unsuitable for award to a small business  
39 concern due to—

40 (i) the diversity, size, or specialized nature of the elements  
41 of the performance specified;

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- 1 (ii) the aggregate dollar value of the anticipated award;  
2 (iii) the geographical dispersion of the contract perform-  
3 ance sites; or  
4 (iv) a combination of the factors described in clauses (i),  
5 (ii), and (iii).
- 6 (B) SEPARATE SMALLER CONTRACT.—In subparagraph (A), the  
7 term “separate smaller contract” means a contract that—  
8 (i) has been performed by 1 or more small business con-  
9 cerns; or  
10 (ii) was suitable for award to 1 or more small business con-  
11 cerns.
- 12 (14) BUSINESS DEVELOPMENT PROGRAM.—The term “business de-  
13 velopment program” means the program under division F of subtitle  
14 II.
- 15 (15) CERTIFIED DEVELOPMENT COMPANY PROGRAM.—The term  
16 “certified development company program” means the program under  
17 division D of subtitle III.
- 18 (16) COMPUTER CRIME.—The term “computer crime” means—  
19 (A) a crime committed against a small business concern by  
20 means of the use of a computer; and  
21 (B) a crime involving the illegal use of, or tampering with, a  
22 computer owned or utilized by a small business concern.
- 23 (17) CONTRACTING OFFICER.—The term “contracting officer” has  
24 the meaning given the term in section 2101 of title 41.
- 25 (18) CREDIT ELSEWHERE.—The term “credit elsewhere”, with re-  
26 spect to a concern or homeowner, means sufficient credit that is avail-  
27 able from a non-Federal source on reasonable terms and conditions  
28 taking into consideration the prevailing rates and terms in the commu-  
29 nity in or near which the concern transacts business or the homeowner  
30 resides, for similar purposes and periods of time.
- 31 (19) DEFENSE AGENCY.—The term “defense agency” has the mean-  
32 ing given the term in section 101 of title 10.
- 33 (20) DISABLED INDIVIDUAL.—The term “disabled individual” means  
34 an individual who—  
35 (A) has a physical, mental, or emotional impairment, defect, ail-  
36 ment, disease, or disability of a permanent nature that in any way  
37 limits the selection of any type of employment for which the per-  
38 son would otherwise be qualified or qualifiable; or  
39 (B) is a service-disabled veteran.
- 40 (21) DISABLED VETERAN.—The term “disabled veteran” has the  
41 meaning given the term in section 4211 of title 38.

## 16

1 (22) DISADVANTAGED OWNER.—The term “disadvantaged owner”  
2 has the meaning given the term in section 231101 of this title.

3 (23) DISASTER.—

4 (A) IN GENERAL.—The term “disaster” means a sudden event  
5 that causes severe damage.

6 (B) INCLUSIONS.—The term “disaster” includes a flood, hurri-  
7 cane, tornado, earthquake, fire, explosion, volcano, windstorm,  
8 landslide or mudslide, tidal wave, commercial fishery failure or  
9 fishery resource disaster (as determined by the Secretary of Com-  
10 merce under section 308(b) of the Interjurisdictional Fisheries Act  
11 of 1986 (16 U.S.C. 4107(b))), ocean condition resulting in the clo-  
12 sure of customary fishing water, riot, civil disorder, or other catas-  
13 trophe.

14 (C) EXCLUSION.—The term “disaster” does not include an eco-  
15 nomic dislocation.

16 (24) DISASTER AREA.—The term “disaster area” means an area af-  
17 fected by a natural or other disaster, as determined for purposes of sec-  
18 tion 221101 or 221102 of this title, during the period of the declara-  
19 tion.

20 (25) DISASTER ASSISTANCE PROGRAM.—The term “disaster assist-  
21 ance program” means—

22 (A) the disaster loan program;

23 (B) the private disaster assistance program;

24 (C) the immediate disaster assistance program; and

25 (D) the expedited disaster assistance business loan guarantee  
26 program.

27 (26) DISASTER LOAN PROGRAM.—The term “disaster loan program”  
28 means the program under chapter 221.

29 (27) ECONOMICALLY DISADVANTAGED INDIAN TRIBE.—The term  
30 “economically disadvantaged Indian tribe” has the meaning given the  
31 term in section 231101 of this title.

32 (28) ENERGY EFFICIENCY PROJECT.—The term “energy efficiency  
33 project” means the installation or upgrading of equipment that results  
34 in a significant reduction in energy usage.

35 (29) ENERGY MEASURE.—The term “energy measure” includes—

36 (A) solar thermal energy equipment that is—

37 (i) of the active type based on mechanically forced energy  
38 transfer;

39 (ii) of the passive type based on convective, conductive, or  
40 radiant energy transfer; or



- 1 (iii) a combination of the types described in clauses (i) and  
2 (ii);  
3 (B) photovoltaic cells and related equipment;  
4 (C) a product or service—  
5 (i) the primary purpose of which is conservation of energy  
6 through a device or technique that increases the energy effi-  
7 ciency of existing equipment, methods of operation, or sys-  
8 tems that use fossil fuel; and  
9 (ii) that is on the Energy Conservation Measures list of the  
10 Secretary of Energy or that the Administrator determines to  
11 be consistent with the intent of this paragraph;  
12 (D) equipment the primary purpose of which is production of  
13 energy from wood, biological waste, grain, or another biomass (as  
14 defined by the Administrator) source of energy;  
15 (E) equipment the primary purpose of which is industrial cogen-  
16 eration of energy, district heating, or production of energy from  
17 industrial waste;  
18 (F) hydroelectric power equipment;  
19 (G) wind energy conversion equipment; and  
20 (H) an engineering, architectural, consulting, or other profes-  
21 sional service that is necessary or appropriate to aid citizens in  
22 using any of the measures described in subparagraphs (A) to (G).  
23 (30) EXPEDITED DISASTER ASSISTANCE LOAN GUARANTEE PRO-  
24 GRAM.—The term “expedited disaster assistance loan guarantee pro-  
25 gram” means the program under chapter 227.  
26 (31) EXPORT ASSISTANCE CENTER.—The term “export assistance  
27 center” means a 1-stop shop for United States exporters established by  
28 the United States and Foreign Commercial Service of the Department  
29 of Commerce pursuant to section 2301(b)(8) of the Omnibus Trade  
30 and Competitiveness Act of 1988 (15 U.S.C. 4721(b)(8)).  
31 (32) EXPORT DEVELOPMENT ACTIVITY.—The term “export develop-  
32 ment activity” includes—  
33 (A) obtaining a standby letter of credit when required as a bid  
34 bond, performance bond, or advance payment guarantee;  
35 (B) participation in a trade show that takes place outside the  
36 United States;  
37 (C) translation of product brochures or catalogues for use in  
38 markets outside the United States;  
39 (D) obtaining a general line of credit for export purposes;  
40 (E) performing a service contract from buyers located outside  
41 the United States;

1 (F) obtaining transaction-specific financing associated with com-  
2 pleting export orders;

3 (G) purchasing real estate or equipment to be used in the pro-  
4 duction of a good or service for export;

5 (H) providing a term loan or other financing to enable a small  
6 business concern, including an export trading company and an ex-  
7 port management company, to develop a market outside the  
8 United States; and

9 (I) acquiring, constructing, renovating, modernizing, improving,  
10 or expanding a production facility or equipment to be used in the  
11 United States in the production of a good or service for export.

12 (33) EXPORT EXPRESS PROGRAM.—The term “export express pro-  
13 gram” means the program under section 205114 of this title.

14 (34) EXPORT FINANCE SPECIALIST.—The term “export finance spe-  
15 cialist” means a full-time equivalent employee of the Office of Inter-  
16 national Trade assigned to an export assistance center to carry out the  
17 duties described in section 277105 of this title.

18 (35) EXPORT WORKING CAPITAL PROGRAM.—The term “export  
19 working capital program” means the program established under section  
20 205108 of this title.

21 (36) EXPRESS LENDER.—The term “express lender” means a lender  
22 authorized by the Administrator to participate in the express loan pro-  
23 gram.

24 (37) EXPRESS LOAN.—

25 (A) EXPORT EXPRESS PROGRAM.—For purposes of the export  
26 express program, the term “express loan” means a loan in which  
27 a lender uses to the maximum extent practicable the loan analyses,  
28 procedures, and documentation of the lender to provide expedited  
29 processing of a loan application.

30 (B) EXPRESS LOAN PROGRAM.—For purposes of the express  
31 loan program, the term “express loan” means a loan made pursu-  
32 ant to section 203120 of this title in which a lender utilizes to the  
33 maximum extent practicable its own loan analyses, procedures,  
34 and documentation.

35 (38) EXPRESS LOAN PROGRAM.—The term “express loan program”  
36 means the program for express loans established by the Administrator  
37 under section 7(a)(25)(B) of the Small Business Act (15 U.S.C.  
38 636(a)(25)(B)) (as in existence on April 5, 2004), with a guarantee  
39 rate of not more than 50 percent.

1 (39) EXTRAORDINARY DISASTER.—The term “extraordinary disaster” means a major disaster that the Administrator declares to be an  
2 extraordinary disaster under section 221108 of this title.  
3

4 (40) EXTRAORDINARY DISASTER-RELATED SUBSTANTIAL ECONOMIC  
5 INJURY.—The term “extraordinary disaster-related substantial economic injury” means economic injury to a small business concern that  
6 results in the inability of the small business concern to—  
7

8 (A) meet its obligations as they mature;

9 (B) meet its ordinary and necessary operating expenses; or

10 (C) market, produce, or provide a product or service ordinarily  
11 marketed, produced, or provided by the small business concern;  
12 because the small business concern relies on materials from the extraordinary disaster area or sells or markets in the extraordinary disaster area.  
13  
14

15 (41) FAST PROGRAM.—The term “FAST program” means the program under section 263305 of this title.  
16

17 (42) FEDERAL AGENCY.—Except in subtitles III and IV:

18 (A) IN GENERAL.—The term “Federal agency” has the meaning  
19 given the term “agency” in section 551 of title 5.

20 (B) EXCLUSION.—The term “Federal agency” does not include—  
21

22 (i) the United States Postal Service; or

23 (ii) the Government Accountability Office.

24 (43) FLOOR PLAN FINANCING PROGRAM.—The term “floor plan financing program” means the program under section 205115 of this  
25 title.  
26

27 (44) GENERAL BUSINESS LOAN PROGRAM.—The term “general business loan program” means the program under division B of subtitle II.  
28

29 (45) HEDGE FUND.—The term “hedge fund” has the meaning given  
30 the term in section 13(h)(2) of the Bank Holding Company Act of  
31 1956 (12 U.S.C. 1851(h)(2)).

32 (46) HISTORICALLY UNDERUTILIZED BUSINESS ZONE.—The term  
33 “historically underutilized business zone” has the meaning given the  
34 term in section 253101 of this title.

35 (47) HOMEOWNER.—The term “homeowner” includes an owner or  
36 lessee of residential property (including personal property of the owner  
37 or lessee of the residential property).

38 (48) HUBZONE.—The term “HUBZone” has the meaning given the  
39 term in section 253101 of this title.

40 (49) HUBZONE PROGRAM.—The term “HUBZone program” means  
41 the program under chapter 253.

1           (50) HUBZONE SMALL BUSINESS CONCERN.—The term “HUBZone  
2           small business concern” has the meaning given the term in section  
3           253101 of this title.

4           (51) IMMEDIATE DISASTER ASSISTANCE PROGRAM.—The term “im-  
5           mediate disaster assistance program” means the program under chap-  
6           ter 225.

7           (52) INDIAN RESERVATION.—

8                (A) IN GENERAL.—The term “Indian reservation” has the  
9                meaning given the term “Indian country” in section 1151 of title  
10              18.

11              (B) EXCLUSIONS.—The term “Indian reservation” does not in-  
12              clude—

13                   (i) land located in a State in which an Indian tribe did not  
14                   exercise governmental jurisdiction on December 21, 2000, un-  
15                   less that Indian tribe is recognized after December 21, 2000,  
16                   by either an Act of Congress or pursuant to regulations of  
17                   the Secretary of the Interior for the administrative recogni-  
18                   tion that an Indian group exists as an Indian tribe (part 83  
19                   of title 25, Code of Federal Regulations); or

20                   (ii) land taken into trust or acquired by an Indian tribe  
21                   after December 21, 2000, if the land—

22                        (I) is not located within the external boundaries of an  
23                        Indian reservation or former reservation; or

24                        (II) is not contiguous to the land held in trust or re-  
25                        stricted status on December 21, 2000.

26              (C) LAND IN OKLAHOMA.—With respect to land in the State of  
27              Oklahoma, the term “Indian reservation” means land that—

28                   (i) is within the jurisdictional areas of an Oklahoma Indian  
29                   tribe (as determined by the Secretary of the Interior); and

30                   (ii) is recognized by the Secretary of the Interior as eligible  
31                   for trust land status under part 151 of title 25, Code of Fed-  
32                   eral Regulations (as in effect on December 21, 2000).

33           (53) MAJOR DISASTER.—The term “major disaster” has the mean-  
34           ing given the term in section 102 of the Robert T. Stafford Disaster  
35           Relief and Emergency Assistance Act (42 U.S.C. 5122).

36           (54) MAJOR DISASTER AREA.—The term “major disaster area”  
37           means the area for which a major disaster is declared.

38           (55) MICROLOAN PROGRAM.—The term “microloan program” means  
39           the program under chapter 213.

40           (56) MILITARY DEPARTMENT.—The term “military department” has  
41           the meaning given the term in section 101 of title 10.

## 21

1 (57) MULTIPLE AWARD CONTRACT.—The term “multiple award con-  
2 tract” means—

3 (A) a multiple award task order contract or delivery order con-  
4 tract that is entered into under chapter 41 of title 41; and

5 (B) any other indefinite delivery, indefinite quantity contract  
6 that is entered into by the head of a Federal agency with 2 or  
7 more sources pursuant to the same solicitation.

8 (58) NATIVE HAWAIIAN ORGANIZATION.—The term “Native Hawai-  
9 ian organization” means a community service organization serving Na-  
10 tive Hawaiians in the State of Hawaii—

11 (A) that is a nonprofit corporation that has filed articles of in-  
12 corporation with the director of the Hawaii Department of Com-  
13 merce and Consumer Affairs, or any successor agency;

14 (B) that is controlled by Native Hawaiians; and

15 (C) the business activities of which will principally benefit Na-  
16 tive Hawaiians in the State of Hawaii.

17 (59) NEW MARKETS VENTURE CAPITAL COMPANY PROGRAM.—The  
18 term “new markets venture capital company program” means the pro-  
19 gram under chapter 305.

20 (60) NON-FEDERALLY REGULATED LENDER.—The term “non-feder-  
21 ally regulated lender” means a business concern (other than a small  
22 business lending company)—

23 (A) that is authorized by the Administrator to make loans  
24 under the general business loan program;

25 (B) that is subject to regulation by a State; and

26 (C) the lending activities of which are not regulated by any Fed-  
27 eral banking authority.

28 (61) PREFERRED LENDER.—The term “preferred lender” means a  
29 lender participating in the preferred lenders program.

30 (62) PREFERRED LENDERS PROGRAM.—The term “preferred lenders  
31 program” means the preferred lenders program carried out under sec-  
32 tion 103202(f)(3) of this title.

33 (63) PREMIER CERTIFIED LENDERS PROGRAM.—The term “premier  
34 certified lenders program” means the program under section 331108  
35 of this title.

36 (64) PRIME PROGRAM.—The term “PRIME program” means the  
37 program under chapter 401.

38 (65) PRIVATE DISASTER ASSISTANCE PROGRAM.—The term “private  
39 disaster assistance program” means the program under chapter 223.

## 22

1 (66) PRIVATE EQUITY FIRM.—The term “private equity firm” has  
2 the meaning given the term “private equity fund” in section 13(h)(2)  
3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

4 (67) PROCURING AGENCY.—The term “procuring agency” means a  
5 Federal agency that has procurement power.

6 (68) PUBLIC OR PRIVATE ORGANIZATION FOR THE DISABLED.—The  
7 term “public or private organization for the disabled” means an organi-  
8 zation—

9 (A) that is organized under the laws of the United States or of  
10 a State;

11 (B) that is operated in the interest of disabled individuals;

12 (C) the net income of which does not inure in whole or in part  
13 to the benefit of any shareholder or other individual;

14 (D) that complies with any applicable occupational health and  
15 safety standard prescribed by the Secretary of Labor; and

16 (E) that, in the production of commodities and in the provision  
17 of services during any fiscal year in which the organization re-  
18 ceived financial assistance under the general business loan pro-  
19 gram, employs disabled individuals for not less than 75 percent of  
20 the man-hours required for the production or provision of the com-  
21 modities or services.

22 (69) QUALIFIED CENSUS TRACT.—The term “qualified census tract”  
23 has the meaning given the term in section 42(d)(5)(C)(ii) of the Inter-  
24 nal Revenue Code of 1986 (26 U.S.C. 42(d)(5)(C)(ii)).

25 (70) QUALIFIED EMPLOYEE TRUST.—The term “qualified employee  
26 trust” has the meaning given the term in section 205109(a) of this  
27 title.

28 (71) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term  
29 “qualified HUBZone small business concern” has the meaning given  
30 the term in section 253101 of this title.

31 (72) QUALIFIED INDIAN TRIBE.—The term “qualified Indian tribe”  
32 means an Indian tribe (as defined in section 4 of the Indian Self-Deter-  
33 mination and Education Assistance Act (25 U.S.C. 450b)) that owns  
34 and controls 100 percent of a small business concern.

35 (73) QUALIFIED NONMETROPOLITAN COUNTY.—The term “qualified  
36 nonmetropolitan county” has the meaning given the term in section  
37 253101 of this title.

38 (74) REDESIGNATED AREA.—The term “redesignated area” has the  
39 meaning given the term in section 253101 of this title.

40 (75) RENEWABLE ENERGY SYSTEM.—The term “renewable energy  
41 system” means a system of energy derived from—

## 23

1 (A) a wind, solar, biomass (including biodiesel), or geothermal  
2 source; or

3 (B) hydrogen derived from biomass or water using an energy  
4 source described in subparagraph (A).

5 (76) RENEWABLE FUEL CAPITAL INVESTMENT PILOT PROGRAM.—  
6 The term “renewable fuel capital investment pilot program” means the  
7 program under chapter 307.

8 (77) RESERVIST.—The term “reservist” means a member of a re-  
9 serve component of the Armed Forces, as described in section 101 of  
10 title 10.

11 (78) SBA.—The term “SBA” means the Small Business Adminis-  
12 tration.

13 (79) SBA DISTRICT.—The term “SBA district” means a part of an  
14 SBA region designated by the Administrator as a district.

15 (80) SBA DISTRICT OFFICE.—The term “SBA district office” means  
16 a district office of SBA established under section 103.101(c) of this  
17 title.

18 (81) SBA REGION.—The term “SBA region” means a geographic re-  
19 gion served by an SBA regional office.

20 (82) SBA REGIONAL OFFICE.—The term “SBA regional office”  
21 means a regional office of SBA established under section 103.101(c)  
22 of this title.

23 (83) SBIR AGENCY.—The term “SBIR agency” has the meaning  
24 given the term in section 261101 of this title.

25 (84) SBIR PROGRAM.—The term “SBIR program” has the meaning  
26 given the term in section 261101 of this title.

27 (85) SCORE.—The term “SCORE” means the volunteer program  
28 known as SCORE.

29 (86) SERVICE-DISABLED VETERAN.—The term “service-disabled vet-  
30 eran” means a veteran with a disability that is service-connected (as  
31 defined in section 101 of title 38).

32 (87) SIMPLIFIED ACQUISITION THRESHOLD.—The term “simplified  
33 acquisition threshold” has the meaning given the term in section 134  
34 of title 41.

35 (88) SMALL AGRICULTURAL COOPERATIVE.—

36 (A) IN GENERAL.—The term “small agricultural cooperative”  
37 means an association (corporate or otherwise) acting pursuant to  
38 the Agricultural Marketing Act (12 U.S.C. 1141j) the size of  
39 which does not exceed the size standard established by the Admin-  
40 istrator for other similar agricultural small business concerns.

## 24

1 (B) SIZE DETERMINATION.—In determining the size of an asso-  
2 ciation described in subparagraph (A), the Administrator—

3 (i) shall regard the association as a business concern; and

4 (ii) shall not include the income or employees of any mem-  
5 ber shareholder of the association.

6 (89) SMALL BUSINESS CONCERN.—The term “small business con-  
7 cern” has the meaning given the term under section 101103 of this  
8 title.

9 (90) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY  
10 SERVICE-DISABLED VETERANS.—The term “small business concern  
11 owned and controlled by service-disabled veterans” means a small busi-  
12 ness concern—

13 (A) not less than 51 percent of which is owned by 1 or more  
14 service-disabled veterans; and

15 (B) the management and daily business operations of which are  
16 controlled by—

17 (i) 1 or more service-disabled veterans; or

18 (ii) in the case of a veteran with permanent and severe dis-  
19 ability, the spouse or permanent caregiver of the veteran.

20 (91) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SO-  
21 CIALY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term  
22 “small business concern owned and controlled by socially and economi-  
23 cally disadvantaged individuals” has the meaning given the term in sec-  
24 tion 231101 of this title.

25 (92) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VET-  
26 ERANS.—The term “small business concern owned and controlled by  
27 veterans” means a small business concern—

28 (A) not less than 51 percent of which is owned by 1 or more  
29 veterans; and

30 (B) the management and daily business operations of which are  
31 controlled by 1 or more veterans.

32 (93) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY  
33 WOMEN.—The term “small business concern owned and controlled by  
34 women” means a small business concern—

35 (A) at least 51 percent of which is owned by 1 or more women;  
36 and

37 (B) the management and daily business operations of the busi-  
38 ness of which are controlled by 1 or more women.

39 (94) SMALL BUSINESS DEVELOPMENT CENTER.—The term “small  
40 business development center” means a small business development cen-  
41 ter that receives financial assistance under chapter 271.



## 25

1 (95) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.—The term  
2 “small business development center program” means the small business  
3 development center program under chapter 271.

4 (96) SMALL BUSINESS INVESTMENT COMPANY PROGRAM.—The term  
5 “small business investment company program” means the program  
6 under chapter 303.

7 (97) SMALL BUSINESS LENDING COMPANY.—The term “small busi-  
8 ness lending company” means a business concern—

9 (A) that is authorized by the Administrator to make loans  
10 under the general business loan program; and

11 (B) the lending activities of which are not subject to regulation  
12 by any Federal or State regulatory agency.

13 (98) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL.—  
14 The term “socially and economically disadvantaged individual” has the  
15 meaning given the term in section 231101 of this title.

16 (99) SOCIALLY DISADVANTAGED INDIVIDUAL.—The term “socially  
17 disadvantaged individual” has the meaning given the term in section  
18 231101 of this title.

19 (100) STTR AGENCY.—The term “STTR agency” has the meaning  
20 given the term in section 261101 of this title.

21 (101) STTR PROGRAM.—The term “STTR program” has the mean-  
22 ing given the term in section 261101 of this title.

23 (102) SURETY BOND GUARANTEE PROGRAM.—The term “surety  
24 bond guarantee program” means the program under chapter 321.

25 (103) UNITED STATES.—The term “United States” includes the  
26 States, the District of Columbia, Puerto Rico, and any other territory  
27 (including a possession) of the United States.

28 (104) VENTURE CAPITAL OPERATING COMPANY.—The term “venture  
29 capital operating company” means an entity described in clause (i), (v),  
30 or (vi) of section 121.103(b)(5) of title 13, Code of Federal Regulations  
31 (or any successor regulation).

32 (105) VETERAN.—The term “veteran” has the meaning given the  
33 term in section 101 of title 38.

34 (106) WOMEN’S BUSINESS CENTER.—The term “women’s business  
35 center” means a women’s business center operating under chapter 273.

36 (107) WOMEN’S BUSINESS CENTER PROGRAM.—The term “women’s  
37 business center program” means the women’s business center program  
38 under chapter 273.

39 **§ 101103. Small business concerns**

40 (a) IN GENERAL.—In this title, the term “small business concern” means  
41 a business concern (including an agricultural enterprise) that—

## 26

1 (1) is independently owned and operated; and

2 (2) is not dominant in its field of operation.

3 (b) INCLUSIONS.—Notwithstanding any other provision of law, an agricul-  
4 tural enterprise that has annual receipts (including receipts of its affiliates)  
5 not in excess of \$750,000 shall be deemed to be a small business concern.

6 (c) SIZE STANDARDS.—

7 (1) IN GENERAL.—In addition to the criteria specified in subsection  
8 (a), the Administrator may specify detailed definitions or standards by  
9 which a business concern may be determined to be a small business  
10 concern for the purposes of this title or any other law.

11 (2) ADDITIONAL CRITERIA.—The standards described in paragraph  
12 (1) may use—

13 (A) number of employees, dollar volume of business, net worth,  
14 net income, or a combination thereof; or

15 (B) other appropriate factors.

16 (3) REQUIREMENTS FOR PRESCRIPTION OF SIZE STANDARD.—Unless  
17 specifically authorized by statute, no Federal agency may prescribe a  
18 size standard for categorizing a business concern as a small business  
19 concern unless the proposed size standard—

20 (A) is proposed after an opportunity for public notice and com-  
21 ment;

22 (B) provides for determining—

23 (i) the size of a manufacturing concern as measured by the  
24 manufacturing concern's average employment based on em-  
25 ployment during each of the manufacturing concern's pay pe-  
26 riods for the preceding 12 months;

27 (ii) the size of a business concern providing services on the  
28 basis of the annual average gross receipts of the business con-  
29 cern over a period of not less than 3 years;

30 (iii) the size of other business concerns on the basis of data  
31 over a period of not less than 3 years; or

32 (iv) other appropriate factors; and

33 (C) is approved by the Administrator.

34 (4) FACTORS TO BE CONSIDERED.—In establishing or approving a  
35 size standard under this subsection, the Administrator shall—

36 (A) ensure that the size standard varies from industry to indus-  
37 try to the extent necessary to reflect the differing characteristics  
38 of the various industries; and

39 (B) consider other factors that the Administrator considers to  
40 be relevant.

41 (5) ALTERNATIVE SIZE STANDARDS.—

## 27

1 (A) IN GENERAL.—The Administrator shall establish an alter-  
2 native size standard for applicants for business loans under the  
3 general business loan program and applicants for development  
4 company loans under the certified development company program.

5 (B) USE OF MAXIMUM TANGIBLE NET WORTH AND AVERAGE  
6 NET INCOME.—The alternative size standard under subparagraph  
7 (A) shall use maximum tangible net worth and average net income  
8 as an alternative to the use of industry standards.

9 (6) LISTING OF ADDITIONAL SIZE STANDARDS.—The Administrator  
10 shall prescribe regulations to carry out this subsection. The regulations  
11 shall include a listing of all small business size standards prescribed by  
12 statute or by individual Federal agencies, identifying the programs or  
13 purposes to which the size standards apply.

14 (7) UPDATED SIZE STANDARDS.—

15 (A) ROLLING REVIEW.—

16 (i) IN GENERAL.—The Administrator shall—

17 (I) during every 18-month period, conduct a detailed  
18 review of not less than  $\frac{1}{3}$  of the size standards for small  
19 business concerns established under this subsection,  
20 which shall include holding not less than 2 public forums  
21 located in different geographic regions of the United  
22 States;

23 (II) after completing a review under subclause (I)  
24 make appropriate adjustments to the size standards to  
25 reflect market conditions;

26 (III) make publicly available—

27 (aa) information regarding the factors evaluated  
28 as part of each review conducted under subclause  
29 (A); and

30 (bb) information regarding the criteria used for  
31 any revised size standards promulgated under sub-  
32 clause (II); and

33 (IV) not later than 30 days after the date on which  
34 the Administrator completes a review under subclause  
35 (I), submit to the Committee on Small Business and En-  
36 trepreneurship of the Senate and the Committee on  
37 Small Business of the House of Representatives and  
38 make publicly available a report regarding the review, in-  
39 cluding why the Administrator—

40 (aa) used the factors and criteria described in  
41 subclause (III); and

1 (bb) adjusted or did not adjust any size standard  
2 that was reviewed.

3 (ii) COMPLETE REVIEW OF SIZE STANDARDS.—The Admin-  
4 istrator shall ensure that each size standard for small busi-  
5 ness concerns established under this subsection is reviewed  
6 under clause (i) not less frequently than once every 5 years.

7 (B) REGULATIONS.—The Administrator shall promulgate regu-  
8 lations for conducting the reviews required under subparagraph  
9 (A).

10 (d) SIZE AND STATUS INTEGRITY.—

11 (1) RECOVERY OF LOSS FROM MISREPRESENTATION.—

12 (A) IN GENERAL.—In a case in which it is established that a  
13 business concern other than a small business concern, by misrepre-  
14 sentation concerning the small business size and status of the  
15 business concern, willfully sought and received an award of a con-  
16 tract, subcontract, cooperative agreement, cooperative research  
17 and development agreement, or grant that was set aside, reserved,  
18 or otherwise classified as intended for award to small business  
19 concerns, the United States, in addition to any other remedy avail-  
20 able to the United States, shall recover from the business concern  
21 the amount that is equal to the amount expended by the United  
22 States on the contract, subcontract, cooperative agreement, coop-  
23 erative research and development agreement, or grant.

24 (B) DEEMED CERTIFICATIONS.—The following actions shall be  
25 deemed affirmative, willful, and intentional certifications of small  
26 business size and status:

27 (i) Submission of a bid or proposal for a Federal contract,  
28 subcontract, cooperative agreement, cooperative research and  
29 development agreement, or grant that is reserved, set aside,  
30 or otherwise classified as intended for award to, small busi-  
31 ness concerns.

32 (ii) Submission of a bid or proposal for a Federal contract,  
33 subcontract, cooperative agreement, cooperative research and  
34 development agreement reserved, or grant that in any way en-  
35 courages a Federal agency to classify the bid or proposal, if  
36 awarded, as an award to a small business concern.

37 (iii) Registration on a Federal electronic database for the  
38 purpose of being considered for award of a Federal contract,  
39 subcontract, cooperative agreement, cooperative research and  
40 development agreement, or grant as a small business concern.

1 (C) CERTIFICATION BY SIGNATURE OF RESPONSIBLE OFFI-  
2 CIAL.—

3 (i) IN GENERAL.—A solicitation, bid, or application for a  
4 Federal contract, subcontract, or grant shall contain a certifi-  
5 cation concerning the small business size and status of a busi-  
6 ness concern seeking the Federal contract, subcontract, or  
7 grant.

8 (ii) CONTENT OF CERTIFICATION.—A certification that a  
9 business concern qualifies as a small business concern of the  
10 exact size and status claimed by the business concern for pur-  
11 poses of bidding on a Federal contract or subcontract, or ap-  
12 plying for a Federal grant, shall contain the signature of an  
13 authorized official on the same page on which the certification  
14 is contained.

15 (D) REGULATIONS.—The Administrator shall promulgate regu-  
16 lations to provide adequate protections to individuals and business  
17 concerns from liability under this paragraph in cases of uninten-  
18 tional errors, technical malfunctions, and other similar situations.

19 (2) ANNUAL CERTIFICATION.—

20 (A) IN GENERAL.—A business certified as a small business con-  
21 cern under this title and subtitle II shall annually certify its small  
22 business size and, if appropriate, its small business status, by  
23 means of a confirming entry on SBA's Online Representations and  
24 Certifications Application database, or any successor to the data-  
25 base.

26 (B) REGULATIONS.—The Administrator, in consultation with  
27 the Inspector General and the Chief Counsel for Advocacy of SBA,  
28 shall promulgate regulations to ensure that—

29 (i) no business concern continues to be certified as a small  
30 business concern on SBA's Online Representations and Cer-  
31 tifications Application database, or any successor to the data-  
32 base, without fulfilling the requirements for annual certifi-  
33 cation under this paragraph; and

34 (ii) the requirements of this paragraph are implemented in  
35 a manner presenting the least possible regulatory burden on  
36 small business concerns.

37 (3) POLICY ON PROSECUTIONS OF SMALL BUSINESS SIZE AND  
38 STATUS FRAUD.—The Administrator, in consultation with the Attorney  
39 General, shall issue a Governmentwide policy on prosecution of small  
40 business size and status fraud, which shall direct Federal agencies to  
41 appropriately publicize the policy.

# Chapter 103—Small Business Administration

## Subchapter I—Organization

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## Subchapter I—Organization

### § 103101. Establishment

(a) IN GENERAL.—There is established to carry out the authorities committed to the Administrator under this title and other law an agency to be known as the Small Business Administration.

(b) INDEPENDENT ESTABLISHMENT.—SBA shall be under the general direction and supervision of the President and shall not be affiliated with or be within any other Federal agency.

(c) OFFICES.—SBA's principal office shall be located in the District of Columbia. The Administrator may establish such regional, district, and branch offices in other places in the United States as the Administrator may determine.

### § 103102. Administrator

(a) IN GENERAL.—The management of SBA shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small business needs and problems.

1 (b) FULL-TIME POSITION.—The Administrator shall not engage in any  
2 business, vocation, or employment other than that of serving as Adminis-  
3 trator.

4 **§ 103103. Deputy Administrator**

5 (a) IN GENERAL.—The President may appoint a Deputy Administrator  
6 of SBA, by and with the advice and consent of the Senate.

7 (b) DUTIES.—The Deputy Administrator shall be Acting Administrator of  
8 SBA during the absence or disability of the Administrator or in the event  
9 of a vacancy in the office of Administrator.

10 **§ 103104. Associate Administrators**

11 (a) IN GENERAL.—The Administrator may appoint Associate Administra-  
12 tors (including the Associate Administrator specified in section 103106 of  
13 this title) to assist in the execution of the functions vested in the Adminis-  
14 trator.

15 (b) ASSOCIATE ADMINISTRATOR FOR VETERANS BUSINESS DEVELOP-  
16 MENT.—

17 (1) IN GENERAL.—One Associate Administrator appointed under  
18 subsection (a) shall be the Associate Administrator for Veterans Busi-  
19 ness Development.

20 (2) POSITION.—The Associate Administrator for Veterans Business  
21 Development shall be an appointee in the Senior Executive Service.

22 (3) REPORTING.—The Associate Administrator for Veterans Busi-  
23 ness Development shall report to and be responsible directly to the Ad-  
24 ministrator.

25 (4) DUTIES.—The Associate Administrator for Veterans Business  
26 Development shall administer the Office of Veterans Business Develop-  
27 ment established under section 103113 of this title.

28 (c) ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND  
29 CAPITAL OWNERSHIP DEVELOPMENT.—

30 (1) IN GENERAL.—One of the Associate Administrators shall be des-  
31 ignated at the time of appointment as the Associate Administrator for  
32 Minority Small Business and Capital Ownership Development.

33 (2) POSITION.—The Associate Administrator for Minority Small  
34 Business and Capital Ownership Development shall be an employee in  
35 the competitive service or a career appointee in the Senior Executive  
36 Service, and the position of Associate Administrator for Minority Small  
37 Business and Capital Ownership Development shall be a career re-  
38 served position.

39 (3) DUTIES.—

40 (A) FORMULATION AND COORDINATION OF POLICIES.—The As-  
41 sociate Administrator for Minority Small Business and Capital

## 32

1 Ownership Development shall be responsible for formulating and  
2 coordinating policies relating to Federal assistance to small busi-  
3 ness concerns eligible for assistance under section 205104 of this  
4 title and small business concerns eligible to receive contracts under  
5 the business development program.

6 (B) BUSINESS DEVELOPMENT PROGRAM.—The Associate Ad-  
7 ministrator for Minority Small Business and Capital Ownership  
8 Development shall be responsible to the Administrator for the for-  
9 mulation, execution, and management of the business development  
10 program (including the making of determinations under para-  
11 graphs (8), (15), (16), and (17) of section 231101 of this title and  
12 sections 233110, 233112(a)(1), and 233118(g) of this title), under  
13 the supervision of the Administrator.

14 (d) ASSOCIATE ADMINISTRATOR FOR SMALL BUSINESS DEVELOPMENT  
15 CENTERS.—

16 (1) APPOINTMENT AND COMPENSATION.—The Administrator shall  
17 appoint an Associate Administrator for Small Business Development  
18 Centers who shall—

19 (A) report to an official who is not more than 1 level below the  
20 Office of the Administrator; and

21 (B) serve without regard to the provisions of title 5 governing  
22 appointments in the competitive service, and without regard to  
23 chapter 51 and subchapter III of chapter 53 of that title relating  
24 to classification and General Schedule pay rates, but at a rate not  
25 less than the rate of pay for a position classified above GS-15  
26 pursuant to section 5108 of title 5.

27 (2) DUTIES.—

28 (A) IN GENERAL.—The sole responsibility of the Associate Ad-  
29 ministrator for Small Business Development Centers shall be to  
30 administer the small business development center program.

31 (B) DUTIES INCLUDED.—Duties of the position shall include—

32 (i) recommending the annual budget for the small business  
33 development center program;

34 (ii) reviewing the annual budgets submitted by each appli-  
35 cant under the small business development center program;

36 (iii) establishing appropriate funding levels for applicants  
37 under the small business development center program;

38 (iv) selecting applicants to participate in the small business  
39 development center program;

40 (v) implementing chapter 271;



(vi) maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers; and

(vii) conducting audits of recipients of grants under chapter 241.

(3) CONSULTATION.—

(A) IN GENERAL.—In carrying out the duties described in this subsection, the Associate Administrator for Small Business Development Centers shall confer with and seek the advice of the National Small Business Development Center Advisory Board and SBA officials in areas served by the small business development centers.

(B) RESPONSIBILITY.—Notwithstanding subparagraph (A), the Associate Administrator shall be responsible for the management and administration of the program and shall not be subject to the approval or concurrence of SBA officials described in subparagraph (A).

(e) ASSOCIATE ADMINISTRATOR FOR INTERNATIONAL TRADE.—One of the Associate Administrators shall be the Associate Administrator for International Trade, who shall be the head of the Office of International Trade established under section 103.109 of this title.

**§ 103105. Personnel**

(a) IN GENERAL.—The Administrator may, subject to the civil service and classification laws—

(1) select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as are necessary to carry out this title;

(2) define their authority and duties; and

(3) pay the costs of qualification of certain of them as notaries public.

(b) INDIVIDUALS EMPLOYED TO RENDER TEMPORARY SERVICES IN CONNECTION WITH A DISASTER.—

(1) IN GENERAL.—The Administrator may pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with subchapter I of chapter 57 of title 5, for travel of any individual employed by SBA to render temporary services not in excess of 6 months in connection with a disaster from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return on completion of the assignment.

(2) EXTENSION OF TERM.—The Administrator may extend the six-month limitation under paragraph (1) for an additional 6 months if the

1 Administrator determines that the extension is necessary to continue  
2 efficient disaster loan making activities.

3 (c) EXPERTS AND CONSULTANTS.—

4 (1) IN GENERAL.—To such extent as the Administrator finds nec-  
5 essary to carry out this title, the Administrator may procure the tem-  
6 porary (not in excess of 1 year) or intermittent services of experts or  
7 consultants (including stenographic reporting services) by contract or  
8 appointment.

9 (2) INAPPLICABILITY OF OTHER LAW.—Service procured under para-  
10 graph (1)—

11 (A) shall be without regard to the civil service and classification  
12 laws; and

13 (B) except in the case of stenographic reporting services by an  
14 organization, shall be without regard to section 6101 of title 41.

15 (3) COMPENSATION.—An individual employed under paragraph  
16 (1)—

17 (A) may be compensated at a rate not in excess of the daily  
18 equivalent of the maximum rate payable under section 5376 of  
19 title 5, including travel time; and

20 (B) while away from the individual's home or regular place of  
21 business, may be allowed travel expenses (including per diem in  
22 lieu of subsistence) as authorized by section 5703 of title 5.

23 **§ 103106. Small Business Investment Division**

24 (a) ESTABLISHMENT OF DIVISION.—There is established in SBA a divi-  
25 sion to be known as the Small Business Investment Division.

26 (b) ASSOCIATE ADMINISTRATOR.—The Small Business Investment Divi-  
27 sion shall be headed by an Associate Administrator appointed by the Admin-  
28 istrator.

29 (c) COMPENSATION.—The Associate Administrator shall receive com-  
30 pensation at the rate provided by law for other SBA Associate Administra-  
31 tors.

32 **§ 103107. Office of Advocacy**

33 (a) DEFINITIONS.—In this section:

34 (1) CHIEF COUNSEL.—The term “Chief Counsel” means the Chief  
35 Counsel for Advocacy appointed under subsection (c).

36 (2) OFFICE.—The term “Office” means the Office of Advocacy es-  
37 tablished by subsection (b).

38 (b) ESTABLISHMENT OF OFFICE.—There is established in SBA the Office  
39 of Advocacy.

40 (c) CHIEF COUNSEL FOR ADVOCACY.—The management of the Office  
41 shall be vested in a Chief Counsel for Advocacy, who shall be appointed

1 from civilian life by the President, by and with the advice and consent of  
2 the Senate.

3 (d) PRIMARY FUNCTIONS.—The primary functions of the Chief Counsel  
4 shall be to—

5 (1) examine the role of small business in the American economy and  
6 the contribution that small business can make in improving competi-  
7 tion, encouraging economic and social mobility for all citizens, restrain-  
8 ing inflation, spurring production, expanding employment opportuni-  
9 ties, increasing productivity, promoting exports, stimulating innovation  
10 and entrepreneurship, and providing an avenue through which new and  
11 untested products and services can be brought to the marketplace;

12 (2) assess the effectiveness of Federal subsidy and assistance pro-  
13 grams for small business and the desirability of reducing the emphasis  
14 on such programs and increasing the emphasis on general assistance  
15 programs designed to benefit all small business concerns;

16 (3)(A) measure the direct costs and other effects of government reg-  
17 ulation on small business concerns; and

18 (B) make legislative and nonlegislative proposals for eliminating ex-  
19 cessive or unnecessary regulation of small business concerns;

20 (4) determine the impact of the tax structure on small business con-  
21 cerns and make legislative and other proposals for altering the tax  
22 structure to enable all small business concerns to realize their potential  
23 for contributing to the improvement of the Nation's economic well-  
24 being;

25 (5) study the ability of financial markets and institutions to meet  
26 small business credit needs and determine the impact of government  
27 demands for credit on small business concerns;

28 (6) determine financial resource availability and recommend methods  
29 for delivery of financial assistance to minority enterprises, including  
30 methods for—

31 (A) securing equity capital;

32 (B) generating markets for goods and services;

33 (C) providing effective business education, more effective man-  
34 agement and technical assistance, and training; and

35 (D) providing assistance in complying with Federal, State, and  
36 local law;

37 (7) evaluate the efforts of Federal agencies, business, and industry  
38 to assist minority business concerns;

39 (8) make such recommendations as may be appropriate to assist the  
40 development and strengthening of minority and other small business  
41 concerns;

1 (9)(A) recommend specific measures for creating an environment in  
2 which all businesses will have the opportunity to compete effectively  
3 and expand to their full potential; and

4 (B) ascertain the common reasons, if any, for small business suc-  
5 cesses and failures;

6 (10)(A) determine the desirability of developing a set of rational, ob-  
7 jective criteria to be used to define small business; and

8 (B) develop such criteria, if appropriate; and

9 (11)(A) evaluate the efforts of each Federal agency, and of private  
10 industry, to assist small business concerns owned and controlled by vet-  
11 erans and small business concerns owned and controlled by service-dis-  
12 abled veterans;

13 (B) provide statistical information on the use of such programs by  
14 small business concerns owned and controlled by veterans and small  
15 business concerns owned and controlled by service-disabled veterans;  
16 and

17 (C) make appropriate recommendations to the Administrator and to  
18 Congress to promote the establishment and growth of small business  
19 concerns owned and controlled by veterans and small business concerns  
20 owned and controlled by service-disabled veterans.

21 (e) DUTIES TO BE PERFORMED ON A CONTINUING BASIS.—

22 (1) IN GENERAL.—The Chief Counsel shall perform the duties de-  
23 scribed in this subsection on a continuing basis.

24 (2) COMPLAINTS, CRITICISMS, AND SUGGESTIONS.—The Chief Coun-  
25 sel shall serve as a focal point for the receipt of complaints, criticisms,  
26 and suggestions concerning the policies and activities of SBA and any  
27 other Federal agency that affects small business concerns.

28 (3) COUNSELING.—The Chief Counsel shall counsel small business  
29 concerns on how to resolve questions and problems concerning the rela-  
30 tionship of the small business to the Federal Government.

31 (4) PROPOSALS FOR CHANGE.—The Chief Counsel shall—

32 (A) develop proposals for changes in the policies and activities  
33 of any Federal agency that will better fulfill the purposes of sub-  
34 title II; and

35 (B) communicate the proposals to the appropriate Federal agen-  
36 cies.

37 (5) REPRESENTATION OF VIEWS AND INTERESTS.—The Chief Coun-  
38 sel shall represent the views and interests of small business concerns  
39 before other Federal agencies the policies and activities of which may  
40 affect small business.

1           (6) DISSEMINATION OF INFORMATION.—The Chief Counsel shall en-  
2 list the cooperation and assistance of public and private agencies, busi-  
3 nesses, and other organizations in disseminating—

4           (A) information about the programs and services provided by  
5 the Federal Government that are of benefit to small business con-  
6 cerns; and

7           (B) information on how small business concerns can participate  
8 in or make use of those programs and services.

9           (7) REGULATORY ANALYSIS.—The Chief Counsel shall carry out the  
10 responsibilities of the Office under chapter 6 of title 5.

11          (f) RURAL TOURISM TRAINING PROGRAM.—In conjunction with the Of-  
12 fice of Rural Affairs and appropriate personnel designated by each SBA dis-  
13 trict office, the Chief Counsel shall conduct training sessions on the types  
14 of Federal assistance available for the development of rural small business  
15 concerns engaged in tourism and tourism-related activities.

16          (g) POWERS.—In carrying out this section, the Chief Counsel may—

17           (1) employ and fix the compensation of such additional staff person-  
18 nel as the Chief Counsel considers necessary, without regard to the pro-  
19 visions of title 5, governing appointments in the competitive service,  
20 and without regard to chapter 51 or subchapter III of chapter 53 of  
21 that title relating to classification and General Schedule pay rates but  
22 at rates not in excess of the lowest rate for GS-15 of the General  
23 Schedule, except that not more than 14 staff personnel at any 1 time  
24 may be employed and compensated at a rate not in excess of GS-15,  
25 step 10, of the General Schedule;

26           (2) procure temporary and intermittent services to the same extent  
27 as is authorized by section 3109 of title 5;

28           (3) consult—

29           (A) with experts and authorities in the fields of small business  
30 investment, venture capital, and investment and commercial bank-  
31 ing and with other comparable lending institutions involved in the  
32 financing of business;

33           (B) with individuals with regulatory, legal, economic, or finan-  
34 cial expertise, including members of the academic community; and

35           (C) with individuals who generally represent the public interest;

36           (4)(A) use the services of the National Advisory Council established  
37 under section 103115 of this title; and

38           (B) in accordance with that section, appoint such other advisory  
39 boards or committees as the Chief Counsel considers reasonably appro-  
40 priate and necessary to carry out this section; and

1 (5) hold hearings and sit and act at such times and places as the  
2 Chief Counsel considers advisable.

3 (h) ASSISTANCE OF FEDERAL AGENCIES.—Each Federal agency shall  
4 furnish the Chief Counsel such reports and other information as the Chief  
5 Counsel considers necessary to carry out this section.

6 (i) ADMINISTRATIVE OPERATIONS.—The Administrator shall—

7 (1) provide the Office with appropriate and adequate office space at  
8 central office and field office locations, together with such equipment,  
9 operating budget, and communications facilities and services as are  
10 necessary; and

11 (2) provide necessary maintenance services for the central office and  
12 field offices and the equipment and facilities located in the offices.

13 (j) REPORTS.—The Chief Counsel may from time to time prepare and  
14 publish such reports as the Chief Counsel considers appropriate.

15 **§ 103108. Division of Program Certification and Eligibility**

16 (a) DEFINITIONS.—In this section:

17 (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Adminis-  
18 trator” means the Associate Administrator for Minority Small Business  
19 and Capital Ownership Development.

20 (2) DIRECTOR.—The term “Director” means the Director of the Di-  
21 vision.

22 (3) DIVISION.—The term “Division” means the Division of Program  
23 Certification and Eligibility established by subsection (b).

24 (b) ESTABLISHMENT OF DIVISION.—There is established, in the Office of  
25 Minority Small Business and Capital Ownership Development, the Division  
26 of Program Certification and Eligibility.

27 (c) DIRECTOR.—The Division shall be headed by a Director, who shall  
28 report directly to the Associate Administrator.

29 (d) FIELD OFFICES.—The Director shall establish field offices within  
30 such SBA regional offices as are necessary to perform efficiently the func-  
31 tions and responsibilities of the Director.

32 (e) DUTIES.—The duties of the Director are—

33 (1) to receive, review, and evaluate applications for certification  
34 under the business development program;

35 (2) to advise a business development program applicant within 15  
36 days after receipt of an application whether the application is complete  
37 and suitable for evaluation and, if not, what matters must be rectified;

38 (3) to make recommendations on such applications to the Associate  
39 Administrator;

40 (4) to review and evaluate financial statements and other submis-  
41 sions from small business concerns participating in the business devel-

opment program to ascertain continued eligibility to receive sub-contracts under the business development program;

(5) to make a request for the initiation of termination or graduation proceedings, as appropriate, to the Associate Administrator;

(6) to make recommendations to the Associate Administrator concerning protests from applicants that are denied admission to the business development program;

(7) to decide protests regarding the status of a small business concern as a small business concern owned and controlled by socially and economically disadvantaged individuals for purposes of any program or activity conducted under chapter 243 or any other provision of Federal law that refers to that chapter for a definition of eligibility for any program; and

(8) to implement such policy directives as are issued by the Associate Administrator under section 233126 of this title regarding, among other things, the geographic distribution of small business concerns to be admitted to the business development program and the industrial makeup of those small business concerns.

(f) DECISIONS ON PROTESTS.—

(1) IN GENERAL.—A decision under subsection (e)(7) shall—

(A) be made available to the protestor, the protested party, the contracting officer (if not the protestor), and all other parties to the proceeding, and published in full text; and

(B) include findings of fact and conclusions of law, with specific reasons supporting the findings or conclusions, on each material issue of fact and law of decisional significance regarding the disposition of the protest.

(2) PRECEDENTIAL VALUE OF PRIOR DECISIONS.—A decision under subsection (e)(7) that was issued before September 4, 1992, shall not have value as precedent in deciding any subsequent protest until the decision is published in full text.

**§ 103109. Office of International Trade**

(a) ESTABLISHMENT OF OFFICE.—There is established in SBA the Office of International Trade, which shall implement the programs under chapter 277 for the primary purposes of increasing—

(1) the number of small business concerns that export; and

(2) the volume of exports by small business concerns.

(b) ASSOCIATE ADMINISTRATOR.—The head of the Office shall be the Associate Administrator for International Trade, who shall be responsible to the Administrator.

1     **§ 103110. Office of Rural Affairs**

2       (a) DEFINITION OF OFFICE.—In this section, the term “Office” means  
3     the Office of Rural Affairs.

4       (b) ESTABLISHMENT OF OFFICE.—There is established in SBA the Office  
5     of Rural Affairs.

6       (c) DIRECTOR.—The Office shall be headed by a director appointed by  
7     the Administrator.

8       (d) FUNCTIONS.—The Office shall—

9           (1) strive to achieve an equitable distribution of the financial assist-  
10          ance available from SBA for small business concerns located in rural  
11          areas;

12          (2) to the extent practicable, compile annual statistics on rural areas,  
13          including statistics concerning the population, poverty, job creation and  
14          retention, unemployment, business failures, and business startups;

15          (3) provide information to industries, organizations, and State and  
16          local governments concerning the assistance available to rural small  
17          business concerns through SBA and through other Federal agencies;

18          (4) provide information to industries, organizations, educational in-  
19          stitutions, and State and local governments concerning programs ad-  
20          ministered by private organizations, educational institutions, and Fed-  
21          eral, State, and local governments that improve the economic opportu-  
22          nities of rural citizens; and

23          (5) work with the United States National Tourism Organization to  
24          assist small business concerns in rural areas with tourism promotion  
25          and development.

26     **§ 103111. Office of Women’s Business Ownership**

27       (a) DEFINITIONS.—In this section:

28           (1) ASSISTANT ADMINISTRATOR.—The term “Assistant Adminis-  
29          trator” means the Assistant Administrator appointed under subsection  
30          (c).

31           (2) OFFICE.—The term “Office” means the Office of Women’s Busi-  
32          ness ownership established by subsection (b).

33       (b) ESTABLISHMENT OF OFFICE.—There is established in SBA the Office  
34     of Women’s Business Ownership.

35       (c) ASSISTANT ADMINISTRATOR.—

36           (1) IN GENERAL.—The Office shall be administered by an Assistant  
37          Administrator, who shall be appointed by the Administrator.

38           (2) QUALIFICATION.—The position of Assistant Administrator shall  
39          be a Senior Executive Service position under section 3132(a)(2) of title  
40          5. The Assistant Administrator shall serve as a noncareer appointee (as  
41          defined in section 3132(a)(7) of that title).



1 (d) DUTIES.—The Assistant Administrator shall—

2 (1) administer SBA’s programs for the development of women’s busi-  
3 ness enterprises (as defined in section 403101 of this title);

4 (2) administer the programs and services of the Office to assist  
5 women entrepreneurs in the areas of—

6 (A) starting and operating a small business concern;

7 (B) development of management and technical skills;

8 (C) seeking Federal procurement opportunities; and

9 (D) increasing the opportunity for access to capital;

10 (3) administer and manage the women’s business center program;

11 (4) recommend the annual administrative and program budgets for  
12 the Office (including the budget for the women’s business center pro-  
13 gram);

14 (5) establish appropriate funding levels for the Office;

15 (6) review the annual budgets submitted by each applicant for the  
16 women’s business center program;

17 (7) select applicants to participate in the women’s business center  
18 program;

19 (8) implement chapter 273;

20 (9) maintain a clearinghouse to provide for the dissemination and ex-  
21 change of information between women’s business centers;

22 (10) serve as the vice chairperson of the Interagency Committee on  
23 Women’s Business Enterprise;

24 (11) serve as liaison for the National Women’s Business Council;  
25 and

26 (12) advise the Administrator on appointments to the Women’s  
27 Business Council.

28 (e) CONSULTATION.—In carrying out the duties described in paragraphs  
29 (2) to (12) of subsection (d), the Assistant Administrator shall confer with  
30 and seek the advice of the SBA officials in areas served by the women’s  
31 business centers.

32 **§ 103112. Small Business and Agriculture Regulatory En-**  
33 **forcement Ombudsman; regional small business**  
34 **regulatory fairness boards**

35 (a) DEFINITIONS.—In this section:

36 (1) BOARD.—The term “Board” means a regional small business  
37 regulatory fairness board established under subsection (e).

38 (2) OMBUDSMAN.—The term “Ombudsman” means the Small Busi-  
39 ness and Agriculture Regulatory Enforcement Ombudsman designated  
40 under subsection (b).

1 (b) SMALL BUSINESS AND AGRICULTURE REGULATORY ENFORCEMENT  
2 OMBUDSMAN.—The Administrator shall designate a Small Business and Ag-  
3 riculture Regulatory Enforcement Ombudsman, who shall report directly to  
4 the Administrator, using SBA personnel to the extent practicable.

5 (c) DUTIES.—The Ombudsman shall—

6 (1) work with each Federal agency with regulatory authority over  
7 small business concerns to ensure that small business concerns that re-  
8 ceive or are subject to an audit, on-site inspection, compliance assist-  
9 ance effort, or other enforcement-related communication or contact by  
10 Federal agency personnel are provided with a means by which to com-  
11 ment on the enforcement activity conducted by those personnel;

12 (2)(A) establish means by which to—

13 (i) receive comments from a small business concern regarding  
14 actions by Federal agency employees conducting compliance or en-  
15 forcement activities with respect to the small business concern;  
16 and

17 (ii) refer comments to the Inspector General of the Federal  
18 agency in the appropriate circumstances; and

19 (B) otherwise seek to maintain the identity of the person and small  
20 business concern making such comments on a confidential basis to the  
21 same extent as employee identities are protected under section 7 of the  
22 Inspector General Act of 1978 (5 U.S.C. App.);

23 (3) based on substantiated comments received from small business  
24 concerns and the Boards, after having provided each Federal agency  
25 described in paragraph (1) an opportunity to comment on drafts of the  
26 report, annually submit to Congress and those Federal agencies a re-  
27 port that—

28 (A) evaluates the enforcement activities of Federal agency per-  
29 sonnel; and

30 (B) includes—

31 (i) a rating of the responsiveness to small business con-  
32 cerns of the various regional and program offices of each such  
33 Federal agency; and

34 (ii) a section in which any such Federal agency may make  
35 such comments made by the Federal agency to drafts of the  
36 report as are not addressed by the Ombudsman in the final  
37 draft; and

38 (4) coordinate, and annually submit to the Administrator and to the  
39 heads of Federal agencies described in paragraph (1) a report on, the  
40 activities, findings, and recommendations of the Boards.

41 (d) FEDERAL AGENCIES OTHER THAN SBA.—

1 (1) ACTIONS TO ENSURE COMPLIANCE.—Federal agencies other than  
2 SBA shall assist the Ombudsman and take actions as necessary to en-  
3 sure compliance with this section.

4 (2) EFFECT OF SECTION.—Nothing in this section replaces or dimin-  
5 ishes the activities of any ombudsman or similar office in any Federal  
6 agency.

7 (e) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

8 (1) ESTABLISHMENT.—The Administrator shall establish a small  
9 business regulatory fairness board in each SBA regional office.

10 (2) MEMBERSHIP.—

11 (A) IN GENERAL.—A Board shall consist of 5 members who are  
12 owners, operators, or officers of small business concerns, ap-  
13 pointed by the Administrator, after receiving the recommendations  
14 of the chair and ranking minority member of the Committee on  
15 Small Business and Entrepreneurship of the Senate and the Com-  
16 mittee on Small Business of the House of Representatives.

17 (B) POLITICAL AFFILIATION.—Not more than 3 of the members  
18 of a Board shall be of the same political party.

19 (C) GOVERNMENT OFFICERS OR EMPLOYEES.—No member of a  
20 Board shall be an officer or employee of the Federal Government  
21 in the executive branch or in Congress.

22 (D) TERM.—A member of a Board shall serve at the pleasure  
23 of the Administrator for a term of 3 years or less.

24 (E) COMPENSATION.—A member of a Board shall serve without  
25 compensation, except that a member shall be allowed travel ex-  
26 penses, including per diem in lieu of subsistence, at rates author-  
27 ized for employees of agencies under subchapter I of chapter 57  
28 of title 5 while away from the home or regular place of business  
29 of the member in the performance of services for the Board.

30 (3) CHAIR.—The Administrator shall select a chair from among the  
31 members of a Board, who shall serve at the pleasure of the Adminis-  
32 trator for not more than 1 year as chair.

33 (4) QUORUM.—A majority of the members of a Board shall con-  
34 stitute a quorum for the conduct of business, but a lesser number may  
35 hold hearings.

36 (5) DUTIES.—A Board shall—

37 (A) meet at least annually to advise the Ombudsman on matters  
38 of concern to small business concerns relating to the enforcement  
39 activities of Federal agencies;

40 (B) report to the Ombudsman on substantiated instances of ex-  
41 cessive enforcement actions of Federal agencies against small busi-

1           ness concerns, including any findings or recommendations of the  
2           Board as to Federal agency enforcement policy or practice; and  
3           (C) prior to publication, provide comment on the annual report  
4           of the Ombudsman prepared under subsection (c).

5       (6) POWERS.—

6           (A) HEARINGS; COLLECTION OF INFORMATION.—A Board may  
7           hold hearings and collect information as appropriate for carrying  
8           out this section.

9           (B) MAIL.—A Board may use the United States mails in the  
10          same manner and under the same conditions as other Federal  
11          agencies.

12          (C) ACCEPTANCE OF DONATIONS.—A Board may accept dona-  
13          tions of services necessary to conduct its business, so long as the  
14          donations and their sources are disclosed by the Board.

15       **§ 103113. Office of Veterans Business Development**

16          (a) DEFINITION OF ASSOCIATE ADMINISTRATOR.—In this section, the  
17          term “Associate Administrator” means the Associate Administrator for Vet-  
18          erans Business Development under section 103104(b) of this title.

19          (b) ESTABLISHMENT OF OFFICE.—There is established in SBA the Office  
20          of Veterans Business Development, which shall be administered by the Asso-  
21          ciate Administrator.

22          (c) DUTIES.—The Associate Administrator—

23               (1) shall be responsible for the formulation, execution, and promotion  
24               of SBA policies and programs of that provide assistance to small busi-  
25               ness concerns owned and controlled by veterans and small business con-  
26               cerns owned and controlled by service-disabled veterans; and

27               (2) shall act as an ombudsman for full consideration of veterans in  
28               all SBA programs.

29       **§ 103114. Task force on purchases from the blind and se-**  
30       **verely disabled**

31          (a) ESTABLISHMENT OF TASK FORCE.—There is established in SBA a  
32          task force on purchases from the blind and severely disabled.

33          (b) MEMBERSHIP.—The task force shall consist of 1 representative of the  
34          small business community appointed by the Administrator and 1 individual  
35          knowledgeable in the affairs of or experienced in the work of sheltered work-  
36          shops appointed by the Executive Director of the Committee for Purchase  
37          from the Blind and Other Severely Disabled established under section 8502  
38          of title 41.

39          (c) DUTIES.—The task force shall meet at least once every 6 months for  
40          the purpose of—

1 (1) reviewing the award of contracts under section 251103 of this  
2 title; and

3 (2) recommending to the Administrator such administrative or statu-  
4 tory changes as the task force considers appropriate.

5 **§ 103115. Advisory committees**

6 (a) IN GENERAL.—The Administrator shall—

7 (1) establish such advisory committees as are necessary to achieve  
8 the purposes of this subtitle and subtitles II and III; and

9 (2) call meetings of the advisory committees from time to time.

10 (b) EXPENSES.—The Administrator shall—

11 (1) pay the transportation expenses and a per diem allowance in ac-  
12 cordance with section 5703 of title 5 to a member of an advisory com-  
13 mittee for travel and subsistence expenses incurred at the request of  
14 the Administrator in connection with travel to points more than 50  
15 miles distant from the home of the member in attending a meeting of  
16 the advisory committee; and

17 (2) rent temporarily, within the District of Columbia or elsewhere,  
18 such hotel or other accommodations as are needed to facilitate the con-  
19 duct of meetings of an advisory committee.

20 **§ 103116. Bureau of PCLP Oversight**

21 (a) ESTABLISHMENT OF BUREAU.—There is established in SBA the Bu-  
22 reau of PCLP Oversight.

23 (b) PURPOSE.—The Bureau of PCLP Oversight shall carry out such  
24 functions of the Administrator under section 331108(e) of this title as the  
25 Administrator may designate.

26 **Subchapter II—Functions**

27 **§ 103201. General powers**

28 (a) SEAL.—The Administrator shall have power to adopt, alter, and use  
29 a seal, which shall be judicially noticed.

30 (b) SERVICES AND FACILITIES.—At the request of the Administrator, the  
31 head of any Federal agency or of the Government Accountability Office or  
32 Postal Service may provide to the Administrator (on a reimbursable or non-  
33 reimbursable basis) information, services, facilities (including any field serv-  
34 ice of the Federal agency), officers, and employees of the Federal agency  
35 to assist in carrying out this title or any other law under which the Admin-  
36 istrator provides assistance to small business concerns.

37 (c) COURT PROCEEDINGS.—The Administrator may sue and be sued in  
38 any court of record of a State having general jurisdiction, or in any United  
39 States district court, and jurisdiction is conferred on a United States dis-  
40 trict court to determine such controversies without regard to the amount in  
41 controversy; but no attachment, injunction, garnishment, or other similar

1 process, mesne or final, shall be issued against the Administrator or SBA  
2 property.

3 (d) LIMITATION ON ADVERTISING REQUIREMENT.—Section 6100 of title  
4 41 shall not apply to a contract of hazard insurance or a purchase or con-  
5 tract for a service or supply on account of property obtained by the Admin-  
6 istrator as a result of a loan made under this subtitle or subtitle II or III  
7 if the premium for the insurance or the amount of the purchase or contract  
8 does not exceed \$1,000.

9 (e) REGULATIONS.—The Administrator may prescribe such regulations as  
10 the Administrator considers necessary to carry out the authority vested in  
11 the Administrator under this subtitle and subtitles II and III.

12 (f) ACCEPTANCE OF SERVICES AND FACILITIES.—The Administrator  
13 may—

14 (1) accept the services and facilities of Federal, State, and local  
15 agencies and groups, both public and private; and

16 (2) use such gratuitous services and facilities as may from time to  
17 time be necessary to further the objectives of the disaster assistance  
18 programs.

19 (g) INVESTIGATIONS.—

20 (1) IN GENERAL.—The Administrator may make such investigations  
21 as the Administrator considers necessary to determine whether a recipi-  
22 ent of or participant in assistance under this subtitle or subtitle II or  
23 III or any other person has engaged or is about to engage in any act  
24 or practice that constitutes or will constitute a violation of any provi-  
25 sion of this subtitle or subtitle II or III (including a regulation or order  
26 issued under this subtitle or subtitle II or III).

27 (2) STATEMENTS.—The Administrator shall permit any person to  
28 file with the Administrator a statement in writing, under oath or other-  
29 wise as the Administrator shall determine, as to all the facts and cir-  
30 cumstances concerning a matter to be investigated.

31 (3) POWERS.—For the purpose of any investigation, the Adminis-  
32 trator may administer oaths and affirmations, subpoena witnesses,  
33 compel the attendance of witnesses, take evidence, and require the pro-  
34 duction of any records that are relevant to the inquiry. Attendance of  
35 witnesses and the production of any such records may be required from  
36 any place in the United States.

37 (4) CONTUMACY OR REFUSAL TO OBEY.—

38 (A) IN GENERAL.—In case of contumacy by, or refusal to obey  
39 a subpoena issued to, any person (including a recipient or partici-  
40 pant), the Administrator may invoke the aid of any court of the  
41 United States within the jurisdiction of which an investigation or

proceeding is carried on, or in which the person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of records, and the court may issue an order requiring the person to appear before the Administrator, to produce records, if so ordered, or to give testimony touching the matter under investigation.

(B) FAILURE TO OBEY.—A failure to obey an order under subparagraph (A) may be punished by the court as a contempt of court, for which purpose process may be served in any judicial district of which the person is an inhabitant or in which the person may be found.

(h) EXAMINATION AND REVIEW FEES.—

(1) IN GENERAL.—The Administrator may require a lender authorized to make loans under the general business loan program, the disaster loan program, the private disaster assistance program, the intermediary lending pilot program, or the microloan program to pay examination and review fees.

(2) USE.—Fees collected under paragraph (1) shall be deposited in the account for salaries and expenses of the Administrator and shall be available for the costs of examinations, reviews, and other lender oversight activities.

(i) LOAN REQUIREMENTS RELATING TO ASSISTANCE PROVIDED TO LOAN APPLICANTS, NONEMPLOYMENT OF PERSONS ASSOCIATED WITH SBA, AND LOAN APPLICATIONS.—No loan shall be made or equipment, facilities, or services furnished by the Administrator under this subtitle or subtitle II or III to any business concern unless the owners, partners, or officers of the business concern—

(1) certify to the Administrator—

(A) the names of any attorneys, agents, or other persons engaged by or on behalf of the business concern for the purpose of expediting applications made to the Administrator for assistance of any sort; and

(B) the amount of fees paid or to be paid to any such persons;

(2) execute an agreement binding the business concern, for a period of 2 years after any assistance is rendered by the Administrator to the business concern, to refrain from employing, tendering any office or employment to, or retaining for professional services any individual who, on the date on which any part of the assistance was rendered, or within 1 year prior to that date, served as an officer, attorney, agent, or employee of the Administrator occupying a position or engaging in an activity that, as determined by the Administrator, involves

1 the exercise of discretion with respect to the granting of assistance  
2 under this subtitle or subtitle II or III; and

3 (3) furnish—

4 (A) the names of lending institutions to which the business con-  
5 cern has applied for a loan; and

6 (B) the date, amount, terms, and proof of refusal of any loan.

7 (j) AUTHORITY RELATING TO TRANSFER OF FUNCTIONS, POWERS, AND  
8 DUTIES.—The President may—

9 (1) transfer to the Administrator any function, power, or duty of any  
10 Federal agency that relates primarily to small business problems; and

11 (2) in connection with the transfer, provide for appropriate transfers  
12 of records, property, necessary personnel, and unexpended balances of  
13 appropriations and other funds available to the Federal agency from  
14 which the transfer is made.

15 (k) FAIR CHARGES; RECOVERY OF DIRECT COSTS.—To the fullest extent  
16 that the Administrator considers practicable, the Administrator shall—

17 (1) make a fair charge for the use of Government-owned property;  
18 and

19 (2) make and let contracts on a basis that will result in a recovery  
20 of the direct costs incurred by the Administrator.

21 (l) NONDUPLICATION OF WORK OR ACTIVITY.—The Administrator shall  
22 not duplicate the work or activity of any other Federal agency unless such  
23 work or activity is expressly provided for in this subtitle or subtitle II or  
24 III.

25 (m) SAFE DEPOSIT BOX RENTALS.—Subsections (a) and (b) of section  
26 3324 of title 31 shall not apply to prepayments of rentals made by the Ad-  
27 ministrator on safe deposit boxes used by the Administrator for the safe-  
28 guarding of instruments held as security for loans or for the safeguarding  
29 of other documents.

30 (n) NONDISCRIMINATION.—In carrying out the programs administered by  
31 the Administrator, the Administrator shall not discriminate on the basis of  
32 sex or marital status against any small business concern or other person  
33 applying for or receiving assistance from SBA.

34 (o) SPECIAL CONSIDERATION TO VETERANS.—In carrying out the pro-  
35 grams administered by the Administrator, the Administrator shall give spe-  
36 cial consideration to veterans and their survivors or dependents.

37 (p) PROHIBITION OF USE OF FUNDS FOR INDIVIDUALS NOT LAWFULLY  
38 WITHIN UNITED STATES.—None of the funds made available under this  
39 subtitle or subtitle II or III may be used to provide any direct benefit or  
40 assistance to any individual in the United States if the Administrator or the



1 official to which the funds are made available receives notification that the  
2 individual is not lawfully within the United States.

3 (q) OBSCENE PRODUCTS AND SERVICES.—Notwithstanding any other  
4 provision of law, the Administrator shall not provide any financial or other  
5 assistance to any business concern or other person engaged in the produc-  
6 tion or distribution of any product or service that has been determined by  
7 a court of competent jurisdiction to be obscene.

8 (r) GIFTS.—In carrying out the functions of the Administrator under this  
9 subtitle and subtitles II and III and to carry out the activities authorized  
10 by chapter 403, the Administrator may—

11 (1) accept, in the name of the Administrator, and employ or dispose  
12 of in furtherance of the purposes of this subtitle or subtitle II or III,  
13 any money or property, real, personal, or mixed, tangible, or intangible,  
14 received by gift, devise, bequest, or otherwise; and

15 (2) accept gratuitous services and facilities.

16 **§ 103202. Financial management**

17 (a) ACCOUNTS.—

18 (1) IN GENERAL.—All repayments of loans, debentures, payments of  
19 interest, and other receipts arising out of transactions entered into by  
20 the Administrator shall be deposited in appropriate accounts as deter-  
21 mined by the Administrator.

22 (2) BUDGETS.—Business-type budgets for each of the accounts re-  
23ferred to in paragraph (1) shall be—

24 (A) submitted to the Committee on Appropriations and Commit-  
25tee on Small Business and Entrepreneurship of the Senate and  
26the Committee on Appropriations and Committee on Small Busi-  
27ness of the House of Representatives; and

28 (B) enacted in the manner prescribed by sections 9103 and  
299104 of title 31 for wholly owned Government corporations.

30 (3) REPORTS.—As soon as possible after the beginning of each cal-  
31endar quarter, the Administrator shall submit to the Committee on Ap-  
32propriations and Committee on Small Business and Entrepreneurship  
33of the Senate and the Committee on Appropriations and Committee on  
34Small Business of the House of Representatives a report that describes  
35the status of each of the accounts referred to in paragraph (1).

36 (4) ISSUANCE OF NOTES.—

37 (A) IN GENERAL.—The Administrator may issue notes to the  
38Secretary of the Treasury for the purpose of obtaining funds nec-  
39essary for discharging obligations under, and for authorized ex-  
40penditures out of, the accounts referred to in paragraph (1).

1 (B) FORM.—Notes issued under subparagraph (A) shall be in  
2 such form and denominations, have such maturities, and be sub-  
3 ject to such terms and conditions as the Administrator may pre-  
4 scribe with the approval of the Secretary of the Treasury.

5 (C) INTEREST.—Notes issued under subparagraph (A) shall  
6 bear interest at a rate fixed by the Secretary of the Treasury, tak-  
7 ing into consideration the current average market yield of out-  
8 standing marketable obligations of the United States having matu-  
9 rities comparable to those of the notes issued under subparagraph  
10 (A).

11 (D) PURCHASE BY THE SECRETARY OF THE TREASURY.—The  
12 Secretary of the Treasury shall purchase any SBA notes issued  
13 under subparagraph (A), and for that purpose the Secretary of the  
14 Treasury may use as a public debt transaction the proceeds from  
15 the sale of any securities issued under chapter 31 of title 31, and  
16 the purposes for which such securities may be issued under that  
17 chapter are extended to include the purchase of notes issued under  
18 subparagraph (A).

19 (E) TREATMENT AS PUBLIC DEBT TRANSACTIONS.—All redemp-  
20 tions, purchases, and sales by the Secretary of the Treasury of  
21 notes issued under subparagraph (A) shall be treated as public  
22 debt transactions of the United States.

23 (F) BORROWING AUTHORITY SUBJECT TO AVAILABILITY OF AP-  
24 PROPRIATIONS.—All borrowing authority contained in this para-  
25 graph shall be effective only to such extent or in such amounts  
26 as are provided in advance in appropriation Acts.

27 (5) UNNEEDED AMOUNTS.—Amounts in an account referred to in  
28 paragraph (1) that are not needed for current operations may be paid  
29 into miscellaneous receipts of the Treasury.

30 (6) INTEREST.—

31 (A) ACTUAL INTEREST COLLECTED.—Following the close of  
32 each fiscal year, the Administrator shall pay into the miscellaneous  
33 receipts of the United States Treasury the actual interest that  
34 SBA collects during that fiscal year on all financings made under  
35 subtitle II.

36 (B) INTEREST RECEIVED ON FINANCING FUNCTIONS.—

37 (i) IN GENERAL.—Except on loan disbursements on which  
38 interest is paid under subparagraph (A), following the close  
39 of each fiscal year, the Administrator shall pay into mis-  
40 cellaneous receipts of the Treasury interest received by SBA  
41 on financing functions performed under this subtitle, subtitle

1           II, and divisions B and C of subtitle III if the capital used  
2           to perform those functions originates from appropriated  
3           funds.

4           (ii) TREATMENT.—Payments under clause (i) shall be  
5           treated by the Department of the Treasury as interest in-  
6           come, not as retirement of indebtedness.

7       (7) CONTRIBUTIONS TO EMPLOYEES' COMPENSATION FUNDS.—

8           (A) IN GENERAL.—The Administrator shall contribute to the  
9           employees' compensation fund, on the basis of annual billings as  
10          determined by the Secretary of Labor, for the benefit payments  
11          made from the fund on account of employees engaged in carrying  
12          out functions financed under the accounts described in paragraph  
13          (1).

14          (B) STATEMENT OF COST.—The annual billings shall include a  
15          statement of the fair portion of the cost of the administration of  
16          the employees' compensation fund, which shall be paid by the Ad-  
17          ministrator into the Treasury as miscellaneous receipts.

18       (b) FINANCIAL MANAGEMENT POWERS.—

19          (1) DISPOSITION OF EVIDENCE OF DEBT, CONTRACT, CLAIM, PER-  
20          SONAL PROPERTY, OR SECURITY.—Under regulations prescribed by the  
21          Administrator, the Administrator may—

22               (A) assign or sell at public or private sale, or otherwise dispose  
23               of for cash or credit, in the discretion of the Administrator and  
24               on such terms and conditions and for such consideration as the  
25               Administrator determines to be reasonable, any evidence of debt,  
26               contract, claim, personal property, or security assigned to or held  
27               by the Administrator in connection with the payment of loans  
28               granted under subtitle II or III; and

29               (B) collect or compromise all obligations assigned to or held by  
30               the Administrator and all legal or equitable rights accruing to the  
31               Administrator in connection with the payment of such loans until  
32               such time as such obligations may be referred to the Attorney  
33               General for suit or collection.

34       (2) SBA MONEYS.—

35           (A) DEPOSIT IN TREASURY.—All moneys of SBA not otherwise  
36           employed may be deposited in the Treasury subject to check by  
37           authority of the Administrator.

38           (B) FEDERAL RESERVE BANKS.—

39               (i) IN GENERAL.—The Federal Reserve banks shall act as  
40               depositories, custodians, and fiscal agents for SBA in the

1           general performance of its powers under this subtitle and sub-  
2           titles II and III.

3           (ii) REIMBURSEMENT.—A Federal Reserve bank, when des-  
4           ignated by the Administrator as fiscal agent for SBA, shall  
5           be entitled to be reimbursed for all expenses incurred as fiscal  
6           agent.

7           (C) BANKS INSURED BY FDIC.—A bank insured by the Federal  
8           Deposit Insurance Corporation, when designated by the Secretary  
9           of the Treasury, shall act as custodian and financial agent for  
10          SBA.

11       (3) REAL PROPERTY.—

12           (A) CONVEYANCE.—The power to convey and to execute in the  
13           name of the Administrator a deed of conveyance, deed of release,  
14           assignment and satisfaction of mortgages, or any other written in-  
15           strument relating to real property or any interest in real property  
16           acquired by the Administrator under this subtitle or subtitle II or  
17           III may be exercised—

18               (i) by the Administrator; or

19               (ii) by any officer or agent appointed by the Administrator,  
20               with or without the execution of an express delegation of  
21               power or power of attorney.

22           (B) OTHER AUTHORITY.—The Administrator may deal with,  
23           complete, renovate, improve, modernize, insure, or rent, or sell for  
24           cash or credit, on such terms and conditions and for such consid-  
25           eration as the Administrator determines to be reasonable, any real  
26           property conveyed to or otherwise acquired by the Administrator  
27           in connection with the payment of loans granted under subtitle II  
28           or III.

29       (4) COLLECTIONS.—

30           (A) IN GENERAL.—The Administrator may pursue to final col-  
31           lection, by way of compromise or otherwise, all claims against 3d  
32           parties assigned to the Administrator in connection with loans  
33           made by the Administrator.

34           (B) DEFICIENCY JUDGMENTS.—The authority under subpara-  
35           graph (A) includes authority to obtain a deficiency judgment or  
36           otherwise in the case of a mortgage assigned to the Administrator.

37       (5) ACQUISITION OF PROPERTY.—The Administrator may acquire, in  
38       any lawful manner, any property (real, personal, or mixed, tangible or  
39       intangible), when the Administrator considers it necessary or appro-  
40       priate to the conduct of the general business loan program and disaster  
41       assistance programs.

1           (6) ASSET SALES.—In connection with the Administrator's imple-  
2           mentation of a program to sell to the private sector loans and other  
3           assets held by the Administrator, the Administrator shall provide to the  
4           Committee on Small Business and Entrepreneurship of the Senate and  
5           the Committee on Small Business of the House of Representatives a  
6           copy of the draft and final plans describing the sale and the anticipated  
7           benefits resulting from the sale.

8           (c) SALE OF GUARANTEED PORTION OF LOAN BY LENDER OR SUBSE-  
9           QUENT HOLDER.—

10           (1) IN GENERAL.—The guaranteed portion of a loan made under  
11           subtitle II or III may be sold by the lender, and by any subsequent  
12           holder, consistent with regulations prescribed by the Administrator,  
13           subject to the limitations stated in paragraph (2).

14           (2) LIMITATIONS.—

15           (A) APPROVAL.—Before the Administrator approves a sale or  
16           resale under paragraph (1), if the lender certifies that the loan has  
17           been properly closed and that the lender has substantially com-  
18           plied with the guarantee agreement and the regulations of the Ad-  
19           ministrator, the Administrator shall review and approve only mate-  
20           rials not previously approved.

21           (B) FEES.—All fees due the Administrator on a guaranteed  
22           loan shall be paid in full prior to a sale or resale under paragraph  
23           (1).

24           (C) DISBURSEMENT.—A loan (except a loan made under section  
25           205108 of this title) shall be fully disbursed to the borrower before  
26           a sale or resale under paragraph (1).

27           (3) CONTINUING OBLIGATION.—After a loan is sold, the lender shall  
28           remain obligated under its guarantee agreement with the Administrator  
29           and shall continue to service the loan in a manner consistent with the  
30           terms and conditions of the guarantee agreement.

31           (4) SECONDARY MARKET.—

32           (A) PROCEDURES.—The Administrator shall develop such pro-  
33           cedures as are necessary for—

34           (i) the facilitation, administration, and promotion of sec-  
35           ondary market operations; and

36           (ii) assessing the increase of small business access to cap-  
37           ital at reasonable rates and terms as a result of secondary  
38           market operations.

39           (B) UNIFORM REGULATIONS.—The sale of the unguaranteed  
40           portion of a loan made under the general business loan program

1 shall not be permitted except in accordance with a regulation pre-  
2 scribed by the Administrator that—

3 (i) applies uniformly to both depository institutions and  
4 other lenders; and

5 (ii) specifies the terms and conditions under which such  
6 sales can be permitted, including maintenance of appropriate  
7 reserve requirements and other safeguards to protect the  
8 safety and soundness of the program.

9 (C) LONG-TERM VIABILITY.—The Administrator shall take such  
10 actions in the awarding of contracts as the Administrator consid-  
11 ers necessary to ensure the continued long-term viability of the  
12 secondary market in loans, debentures, and other securities guar-  
13 anteed by the Administrator.

14 (5) EFFECT OF SUBSECTIONS.—Nothing in this subsection or sub-  
15 section (d) impedes or extinguishes—

16 (A) the right of a borrower or a successor in interest to a bor-  
17 rower to prepay (in whole or in part) a loan made under the gen-  
18 eral business loan program, the guaranteed portion of which may  
19 be included in a trust or pool; or

20 (B) the rights of any person under subsection (i).

21 (d) TRUST CERTIFICATES.—

22 (1) IN GENERAL.—The Administrator may issue trust certificates  
23 representing ownership of all or a fractional part of the guaranteed  
24 portion of 1 or more loans guaranteed by the Administrator under sub-  
25 title II or section 331103 of this title.

26 (2) TRUST OR POOL.—A trust certificate shall be based on and  
27 backed by a trust or pool approved by the Administrator and composed  
28 solely of the entire guaranteed portion of a loan.

29 (3) GUARANTEE.—

30 (A) IN GENERAL.—The Administrator, on such terms and con-  
31 ditions as the Administrator considers appropriate, may guarantee  
32 the timely payment of the principal of and interest on trust certifi-  
33 cates issued by the Administrator or an agent of the Adminis-  
34 trator for purposes of this subsection.

35 (B) LIMIT.—

36 (i) IN GENERAL.—A guarantee under subparagraph (A)  
37 shall be limited to the extent of principal and interest on the  
38 guaranteed portion of the loan or loans that compose the  
39 trust or pool.

40 (ii) PREPAYMENT.—If a loan in a trust or pool is prepaid,  
41 either voluntarily or in the event of default, the guarantee of

1           timely payment of principal and interest on the trust certifi-  
2           cate shall be reduced in proportion to the amount of principal  
3           and interest that the prepaid loan represents in the trust or  
4           pool.

5           (iii) INTEREST.—Interest on prepaid or defaulted loans  
6           shall accrue and be guaranteed by the Administrator only  
7           through the date of payment on the guarantee.

8           (iv) CALL.—During the term of a trust certificate, the  
9           trust certificate may be called for redemption due to prepay-  
10          ment or default of all loans constituting the trust or pool.

11          (4) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full  
12          faith and credit of the United States is pledged to the payment of all  
13          amounts that may be required to be paid under any guarantee of a  
14          trust certificate issued by SBA or its agent under this subsection.

15          (5) FEES.—

16           (A) IN GENERAL.—The Administrator may impose a fee for a  
17           loan guarantee sold into the secondary market under subsection  
18           (c) in an amount equal to not more than 50 percent of the portion  
19           of the sale price that exceeds 110 percent of the outstanding prin-  
20           cipal amount of the portion of the loan guaranteed by the Admin-  
21           istrator.

22           (B) COLLECTION; USE.—A fee under subparagraph (A)—

23           (i) shall be collected by the Administrator or by the agent  
24           that carries out on behalf of the Administrator the central  
25           registration functions required by subsection (e); and

26           (ii) shall be paid to the Administrator and used solely to  
27           reduce the subsidy on loans guaranteed under the general  
28           business loan program.

29           (C) NO CHARGE TO BORROWER.—A fee under subparagraph (A)  
30           shall not be charged to the borrower under the loan that is guar-  
31           anteed.

32           (D) NO PRECLUSION.—Nothing in this paragraph precludes an  
33           agent of the Administrator from collecting a fee approved by the  
34           Administrator for the functions described in subsection  
35           (e)(2)(A)(ii).

36           (E) PENALTY.—The Administrator may impose and collect, di-  
37           rectly or through a fiscal and transfer agent, a reasonable penalty  
38           on late payment of a fee under subparagraph (A) in an amount  
39           not to exceed 5 percent of the fee per month plus interest.

40           (F) AGENTS.—

(i) IN GENERAL.—The Administrator may contract with an agent to carry out, on behalf of SBA, the assessment and collection of the annual fee established under section 203114 of this title.

(ii) COMPENSATION.—An agent may receive, as compensation for services, any interest earned on the fee while in the control of the agent before the time at which the agent is contractually required to remit the fee to the Administrator.

(6) SUBROGATION.—If the Administrator pays a claim under a guarantee issued under this subsection, the Administrator shall be subrogated fully to the rights satisfied by the payment.

(7) EXERCISE OF OWNERSHIP RIGHTS.—No Federal, State, or local law shall preclude or limit the exercise by SBA of its ownership rights in the portions of loans constituting the trust or pool against which a trust certificate is issued.

(8) DIVISION OF LOAN GUARANTEE INTO INCREMENTS.—

(A) IN GENERAL.—If the amount of the guaranteed portion of a loan under the general business loan program is more than \$500,000, the Administrator shall, on request of a pool assembler, divide the loan guarantee into increments of \$500,000 and 1 increment of any remaining amount less than \$500,000, to permit the maximum amount of any loan in a pool to be not more than \$500,000.

(B) LIMITATION.—Only 1 increment of any loan guarantee divided under subparagraph (A) may be included in the same pool.

(C) INCREMENTS TO DIFFERENT BORROWERS.—Increments of loan guarantees to different borrowers that are divided under subparagraph (A) may be included in the same pool.

(e) CENTRAL REGISTRATION OF LOANS AND TRUST CERTIFICATES.—

(1) DEFINITION OF SELLER.—In this subsection, the term “seller”, with respect to a sale of a loan, does not include—

(A) an entity that made the loan; or

(B) an individual or entity that sells 3 or fewer guaranteed loans per year.

(2) IN GENERAL.—Under regulations prescribed by the Administrator—

(A) the Administrator shall—

(i) provide for a central registration of all loans and trust certificates sold under subsections (c) and (d);

(ii) contract with an agent to carry out on behalf of the Administrator the central registration functions of this sec-



tion and the issuance of trust certificates to facilitate pooling;  
and

(iii) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under subtitle II and to the purchaser of a trust certificate issued under subsection (d) information on the terms, conditions, and yield of the instrument to be sold; and

(B) the Administrator may regulate brokers and dealers in guaranteed loans and trust certificates sold under subsections (c) and (d).

(3) AGENT.—An agent described in paragraph (2)(A)(ii)—

(A) shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interest of the Government; and

(B) may be compensated through any of the fees assessed under this section and any interest earned on any funds collected by the agent while the funds are in the control of the agent and before the time at which the agent is contractually required to transfer the funds to the Administrator or to the holders of the trust certificates, as appropriate.

(4) FORM OF REGISTRATION.—

(A) IN GENERAL.—This subsection does not preclude the use of a book-entry or other electronic form of registration for trust certificates.

(B) BOOK-ENTRY SYSTEM.—SBA may, with the consent of the Secretary of the Treasury, use the book-entry system of the Federal Reserve System.

(f) ACTION DEALING WITH OR REALIZING ON LOAN.—

(1) IN GENERAL.—In addition to exercising any power, function, privilege, or immunity vested in the Administrator by any other provision of law, the Administrator may take any and all actions (including the procurement of the services of an attorney by contract in any office in which an attorney is not or cannot be economically employed full time to render such services) if the Administrator determines that such action is necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on a loan made under subtitle II or III.

(2) DEFERRED PARTICIPATION LOAN.—With respect to a deferred participation loan, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize a participating lending institution to take action relating to loan servicing

on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation.

(3) PREFERRED LENDERS PROGRAM.—

(A) IN GENERAL.—Under this subsection, the Administrator may carry out a preferred lenders program under which a written agreement between a lender and the Administrator delegates to the lender—

(i) complete authority to make and close loans with a guarantee from the Administrator without obtaining the prior specific approval of the Administrator; and

(ii) complete authority to service and liquidate the loans without obtaining the prior specific approval of the Administrator for routine servicing and liquidation activities, subject to the limitation that the lender shall not take any action creating an actual or apparent conflict of interest.

(B) EXPORT-IMPORT BANK LENDERS.—A lender that is participating in the delegated authority lender program of the Export-Import Bank of the United States (or any successor to the program) shall be eligible to participate in the preferred lenders program.

(C) STANDARD REVIEW PROGRAM.—The Administrator shall carry out a standard review program under which, on entry into the preferred lenders program and annually or more frequently thereafter, each preferred lender's participation in the preferred lenders program is assessed, including an assessment of defaults, loans, and recoveries of loans made by the preferred lender under the general business loan program.

(g) FEES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Administrator may impose, retain, and use only—

(A) fees that are specifically authorized by law; and

(B) fees that were in effect on September 30, 1994, in the amounts and at the rates in effect on that date.

(2) ADDITIONAL FEES.—The Administrator may, subject to approval in appropriations Acts, impose, retain, and use, in addition to fees described in paragraph (1)—

(A) a fee not exceeding \$100 for a loan servicing action (other than a loan assumption) requested after disbursement of the loan, including any substitution of collateral, release or substitution of a guarantor, reamortization, or similar action;

(B) a fee not exceeding \$300 for a loan assumption;

1 (C) a fee not exceeding 1 percent of the amount of requested  
2 financings under chapter 303 for which the applicant requests a  
3 commitment from SBA for funding during the following year; and

4 (D) fees to recover the direct, incremental cost involved in the  
5 production and dissemination of compilations of information pro-  
6 duced by the Administrator under this title.

7 (3) LIMITATION ON USE.—Amounts collected under this subsection  
8 shall be used solely to facilitate the administration of the program that  
9 generated the excess amounts.

10 (h) AMOUNTS COLLECTED BY FISCAL TRANSFER AGENTS.—

11 (1) IN GENERAL.—The Administrator may collect, retain and use,  
12 subject to approval in appropriations Acts, any amount collected by a  
13 fiscal transfer agent that is not used by the fiscal transfer agent as  
14 payment of the cost of loan pooling or debenture servicing operations.

15 (2) LIMITATION ON USE.—Amounts collected under this subsection  
16 shall be used solely to facilitate the administration of the program that  
17 generated the excess amounts.

18 (i) UNDERTAKING OR SUSPENSION OF PAYMENT OBLIGATION.—

19 (1) DEFINITION OF REQUIRED PAYMENTS.—In this subsection, the  
20 term “required payment”, with respect to a loan, means a payment of  
21 principal and interest under the loan.

22 (2) IN GENERAL.—Subject to the requirements and conditions con-  
23 tained in this subsection, on application by a small business concern  
24 that is the recipient of a loan made under subtitle II or III, the Admin-  
25 istrator may—

26 (A) undertake the small business concern’s obligation to make  
27 the required payments under the loan; or

28 (B) if the loan was a direct loan made by the Administrator,  
29 suspend the obligation.

30 (3) NO REQUIREMENT FOR PAYMENT.—During any period in which  
31 required payments are being made by the Administrator pursuant to  
32 an undertaking of an obligation or in which an obligation is suspended,  
33 no required payment with respect to the loan may be required to be  
34 made by the small business concern.

35 (4) CONDITIONS.—The Administrator may undertake or suspend for  
36 a period of not to exceed 5 years a small business concern’s obligation  
37 under this subsection only if—

38 (A) without the undertaking or suspension of the obligation, the  
39 small business concern would, as determined in the sole discretion  
40 of the Administrator, become insolvent or remain insolvent;

1 (B) with the undertaking or suspension of the obligation, the  
2 small business concern would, as determined in the sole discretion  
3 of the Administrator, become or remain a viable business; and

4 (C) the small business concern executes an agreement in writing  
5 satisfactory to the Administrator as provided in paragraph (6).

6 (5) EXTENSION OF TERM.—Notwithstanding section 203109 of this  
7 title, the Administrator may extend the term of a loan on which the  
8 Administrator undertakes or suspends the obligation under this sub-  
9 section for a corresponding period of time.

10 (6) AGREEMENT; REQUIRED ACTION.—

11 (A) AGREEMENT.—Before undertaking or suspending a small  
12 business concern's obligation under this subsection, the Adminis-  
13 trator, consistent with the purposes of this subsection, shall re-  
14 quire the small business concern to agree in writing to repay to  
15 the Administrator the aggregate amount of the required payments  
16 during the period for which the obligation was undertaken or sus-  
17 pended—

18 (i) by periodic payments not less in amount or less fre-  
19 quently falling due than those that were due under the loan  
20 during that period;

21 (ii) pursuant to a repayment schedule agreed on by the Ad-  
22 ministrator and the small business concern; or

23 (iii) by a combination of the payments described in clauses  
24 (i) and (ii).

25 (B) REQUIRED ACTION.—In addition to requiring the small  
26 business concern to execute the agreement described in subpara-  
27 graph (A), the Administrator shall, before undertaking or suspend-  
28 ing the obligation, take such action, and require the small business  
29 concern to take such action, as the Administrator considers appro-  
30 priate in the circumstances (including the provision of such secu-  
31 rity as the Administrator considers necessary or appropriate to en-  
32 sure that the rights and interests of the lender will be safeguarded  
33 adequately during and after the period in which the obligation is  
34 undertaken or suspended).

35 (j) INTEREST RATE ON DEFERRED PARTICIPATION.—On purchase by the  
36 Administrator of a deferred participation entered into under the general  
37 business loan program, disaster loan program, private disaster loan pro-  
38 gram, intermediary lending pilot program, or microloan program, the Ad-  
39 ministrator may continue to charge a rate of interest not to exceed that ini-  
40 tially charged by the participating institution on the amount purchased for  
41 the remaining term of the indebtedness.

1 (k) SUBORDINATION TO CERTAIN STATE TAX LIENS.—Any interest held  
2 by the Administrator in property as security for a loan shall be subordinate  
3 to any lien on the property for taxes due on the property to a State or polit-  
4 ical subdivision of a State in any case in which the lien would, under appli-  
5 cable State law, be superior to that interest if the interest were held by any  
6 party other than the United States.

7 (l) RISK MANAGEMENT DATABASE.—

8 (1) ESTABLISHMENT.—The Administrator shall establish, within the  
9 management system for the general business loan program, disaster as-  
10 sistance programs, and certified development company program a man-  
11 agement information system that will generate a database capable of  
12 providing timely and accurate information in order to identify loan un-  
13 derwriting, collections, recovery, and liquidation problems.

14 (2) INFORMATION TO BE MAINTAINED.—In addition to such other  
15 information as the Administrator considers appropriate, the database  
16 established under paragraph (1) shall, with respect to each loan pro-  
17 gram described in paragraph (1), include information relating to—

18 (A) the identity of the institution making the guaranteed loan  
19 or issuing the debenture;

20 (B) the identity of the borrower;

21 (C) the total dollar amount of the loan or debenture;

22 (D) the total dollar amount of Government exposure in each  
23 loan;

24 (E) the SBA district in which the borrower has its principal of-  
25 fice;

26 (F) the principal line of business of the borrower, as identified  
27 by North American Industry Classification System (or any succes-  
28 sor to that system) code;

29 (G) the delinquency rate for each program (including number of  
30 instances and days overdue);

31 (H) the number and amount of repurchases, losses, and recover-  
32 ies in each program;

33 (I) the number of deferrals or forbearances in each program (in-  
34 cluding days and number of instances);

35 (J) comparisons, on the basis of loan program, lender, SBA dis-  
36 trict, and SBA region, for all the data elements maintained; and

37 (K) underwriting characteristics of each loan that has entered  
38 into default, including term, amount and type of collateral, loan-  
39 to-value and other actual and projected ratios, line of business,  
40 credit history, and type of loan.

1     **§ 103203. Small business economic database**

2       (a) IN GENERAL.—The Administrator shall maintain an external small  
3     business economic database for the purpose of providing Congress and the  
4     Administrator information on the economic condition and the expansion or  
5     contraction of the small business sector.

6       (b) ECONOMIC INDICES.—In carrying out subsection (a), the Adminis-  
7     trator shall publish on a regular basis national small business economic indi-  
8     ces and, to the extent feasible, regional small business economic indices that  
9     include data relating to—

- 10           (1) employment, layoffs, and new hires;
- 11           (2) number of business establishments and the types of such estab-  
12     lishments such as sole proprietorships, corporations, and partnerships;
- 13           (3) number of business formations and failures;
- 14           (4) sales and new orders;
- 15           (5) back orders;
- 16           (6) investment in plant and equipment;
- 17           (7) changes in inventory and rate of inventory turnover;
- 18           (8) sources and amounts of capital investment, including debt, eq-  
19     uity, and internally generated funds;
- 20           (9) debt-to-equity ratios;
- 21           (10) exports;
- 22           (11) number and dollar amount of mergers and acquisitions by size  
23     of acquiring and acquired firm; and
- 24           (12) concentration ratios.

25     **§ 103204. Small business computer security and education**  
26           **program**

27       (a) IN GENERAL.—The Administrator shall establish a small business  
28     computer security and education program to—

- 29           (1) provide small business concerns information regarding—
  - 30               (A) utilization and management of computer technology;
  - 31               (B) computer crimes committed against small business con-  
32     cerns; and
  - 33               (C) security for computers owned or utilized by small business  
34     concerns;
- 35           (2) provide for periodic forums for small business concerns to im-  
36     prove their knowledge of the matters described in paragraph (1); and
- 37           (3) provide training opportunities to educate small business users on  
38     computer security techniques.

39       (b) INFORMATION AND MATERIALS.—The Administrator, after consulta-  
40     tion with the Director of the National Institute of Standards and Tech-

nology of the Department of Commerce, shall develop information and materials to carry out the activities described in subsection (a).

**§ 103205. General policies governing the granting and denial of applications**

The Administrator shall establish general policies (particularly with reference to the public interest in the granting and denial of applications for financial assistance by the Administrator and with reference to the coordination of the functions of the Administrator with other activities and policies of the Government), which shall govern the granting and denial of applications for financial assistance by the Administrator.

**§ 103206. Retention of records**

The Administrator and the Inspector General of SBA shall—

(1) retain all correspondence, records of inquiries, memoranda, reports, books, and other records, including memoranda as to all investigations conducted by or for SBA, for a period of at least 1 year after the date of the record; and

(2) at all times keep the records available for inspection and examination by the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives or the authorized representatives of either Committee.

**§ 103207. Consultation and cooperation with other Federal agencies**

(a) IN GENERAL.—To the extent that the Administrator considers it necessary to protect and preserve small business interests, the Administrator shall consult and cooperate with other Federal agencies in the formulation by the Administrator of policies affecting small business concerns.

(b) RESPONSE.—When requested by the Administrator, a Federal agency shall consult and cooperate with the Administrator in the formulation by the Federal agency of policies affecting small business concerns to ensure that small business interests will be recognized, protected, and preserved.

(c) EFFECT OF SECTION.—This section does not require a Federal agency to consult or cooperate with the Administrator in a case in which the head of the Federal agency determines that such consultation or cooperation would unduly delay action that must be taken by the Federal agency to protect the national interest in an emergency.

**§ 103208. Representation of status as small business concern**

(a) IN GENERAL.—Any representation of the status of any concern or person as a small business concern, HUBZone small business concern, small business concern owned and controlled by socially and economically disadvantaged individuals, or small business concern owned and controlled by

1 women in order to obtain any prime contract or subcontract described in  
 2 subsection (b) shall be of no effect unless the representation is in writing.

3 (b) PRIME CONTRACTS AND SUBCONTRACTS.—A prime contract or sub-  
 4 contract referred to in subsection (a) is—

5 (1) a prime contract to be awarded under chapter 251, 253, 261,  
 6 or 263;

7 (2) a subcontract to be awarded under chapter 233;

8 (3) a subcontract that is to be included as part or all of a goal con-  
 9 tained in a subcontracting plan required under section 243103 of this  
 10 title; or

11 (4) a prime contract or subcontract to be awarded as a result, or  
 12 in furtherance, of any other provision of Federal law that specifically  
 13 references chapter 243 for a definition of program eligibility.

#### 14 **§ 103209. Criminal background checks**

15 Before approval of a loan under the general business loan program or a  
 16 debenture guarantee under the certified development company program, the  
 17 Administrator may verify the applicant's criminal background (or lack of  
 18 criminal background) through the best available means, including, if pos-  
 19 sible, use of the National Crime Information Center computer system at the  
 20 Federal Bureau of Investigation.

### 21 **Chapter 105—Penalties**

Sec.

105101. False statement; overvaluation of security.

105102. Unlawful act by person connected with SBA.

105103. Concealment, disposal, or conversion of property.

105104. Misrepresentation of status as small business concern.

105105. False certification of past compliance.

#### 22 **§ 105101. False statement; overvaluation of security**

23 A person that makes a statement, knowing the statement to be false, or  
 24 willfully overvalues a security for the purpose of obtaining for himself or for  
 25 any applicant a loan, or a loan extension by renewal, deferment of action,  
 26 or otherwise, or the acceptance, release, or substitution of security for a  
 27 loan, or for the purpose of influencing in any way the action of the Adminis-  
 28 trator, or for the purpose of obtaining money, property, or anything of  
 29 value, under this subtitle or subtitle II or III, shall be imprisoned not more  
 30 than 2 years, fined not more than \$5,000, or both.

#### 31 **§ 105102. Unlawful act by person connected with SBA**

32 A person connected in any capacity with SBA that—

33 (1) embezzles, abstracts, purloins, or willfully misapplies any money,  
 34 funds, security, or other thing of value, whether belonging to the Ad-  
 35 ministrator or pledged or otherwise entrusted to the Administrator;



1 (2) with intent to defraud the Administrator or any other body poli-  
2 tic or corporate, or any individual, or to deceive any SBA officer, audi-  
3 tor, or examiner—

4 (A) makes a false entry in a book, report, or statement of or  
5 to the Administrator; or

6 (B) without being duly authorized, draws an order or issues,  
7 puts forth, or assigns a note, debenture, bond, or other obligation,  
8 or draft, bill of exchange, mortgage, judgment, or decree of judg-  
9 ment of the Administrator;

10 (3) with intent to defraud, participates or shares in or receives di-  
11 rectly or indirectly any money, profit, property, or benefit through any  
12 transaction, loan, commission, contract, or other act of the Adminis-  
13 trator; or

14 (4)(A) gives any unauthorized information concerning a future action  
15 or plan of the Administrator that might affect the value of a security;  
16 or

17 (B) having such knowledge, invests or speculates, directly or indi-  
18 rectly, in a security or property of any company or corporation receiv-  
19 ing a loan or other assistance from the Administrator;

20 shall be imprisoned not more than 5 years, fined not more than \$10,000,  
21 or both.

22 **§ 105103. Concealment, disposal, or conversion of property**

23 A person that, with intent to defraud, knowingly conceals, removes, dis-  
24 poses of, or converts to the use of that person or any other person any prop-  
25 erty mortgaged or pledged to, or held by, the Administrator—

26 (1) shall be imprisoned not more than 1 year, fined not more than  
27 \$1,000, or both; or

28 (2) if the value of the property exceeds \$100, shall be imprisoned  
29 not more than 5 years, fined not more than \$5,000, or both.

30 **§ 105104. Misrepresentation of status as small business con-**  
31 **cern**

32 (a) OFFENSE.—A person that, in writing, misrepresents the status of a  
33 concern or person as a small business concern, qualified HUBZone small  
34 business concern, small business concern owned and controlled by socially  
35 and economically disadvantaged individuals, or small business concern  
36 owned and controlled by women, in order to obtain for that person or any  
37 other person—

38 (1) a prime contract to be awarded under chapter 251, 253, 261,  
39 or 263;

40 (2) a subcontract to be awarded under chapter 233;

1 (3) a subcontract that is to be included as part or all of a goal con-  
 2 tained in a subcontracting plan required under section 243103 of this  
 3 title; or

4 (4) a prime contract or subcontract to be awarded as a result, or  
 5 in furtherance, of any other provision of Federal law that specifically  
 6 references chapter 243 for a definition of program eligibility;  
 7 shall be subject to the penalties described in subsection (b).

8 (b) PENALTIES.—A person that violates subsection (a)—

9 (1) shall be imprisoned not more than 10 years, fined not more than  
 10 \$500,000 or both;

11 (2) shall be subject to the administrative remedies prescribed by  
 12 chapter 38 of title 31;

13 (3) shall be subject to suspension and debarment as specified in sub-  
 14 part 9.4 of title 48, Code of Federal Regulations (or any successor reg-  
 15 ulation) on the basis that the misrepresentation indicates a lack of  
 16 business integrity that seriously and directly affects the present respon-  
 17 sibility to perform any contract awarded by the Federal Government  
 18 or a subcontract under such a contract; and

19 (4) shall be ineligible for participation in any program or activity  
 20 conducted under this subtitle or subtitle II or III for a period not to  
 21 exceed 3 years.

## 22 **§ 105105. False certification of past compliance**

23 A person that falsely certifies past compliance with the requirements of  
 24 section 233128 of this title—

25 (1) shall be imprisoned not more than 10 years, fined not more than  
 26 \$500,000 or both;

27 (2) shall be subject to the administrative remedies prescribed by  
 28 chapter 38 of title 31;

29 (3) shall be subject to suspension and debarment as specified in sub-  
 30 part 9.4 of title 48, Code of Federal Regulations (or any successor reg-  
 31 ulation) on the basis that the misrepresentation indicates a lack of  
 32 business integrity that seriously and directly affects the present respon-  
 33 sibility to perform any contract awarded by the Federal Government  
 34 or a subcontract under such a contract; and

35 (4) shall be ineligible for participation in any program or activity  
 36 conducted under this subtitle or subtitle II or III for a period not to  
 37 exceed 3 years.

## 38 **Chapter 107—Periodic Reports**

Sec.

107101. Comprehensive annual report on the state of small business and on SBA operations.

107102. Annual report on expenditures.

107103. Annual report on secondary market operations.

107104. Annual report on impact of authority to impose secondary market fees.

- 107105. Annual report on needs of small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans.
- 107106. Annual report on contract bundling.
- 107107. Annual report on business development program.
- 107108. Annual report on contract participation goals.
- 107109. Annual report on cost savings from breakout procurement center representatives.
- 107110. Reports on SBIR programs, STTR programs, and the FAST program.
- 107111. Annual report on women's business center program.
- 107112. Annual report of the Associate Administrator for International Trade.
- 107113. Biennial report on filling gaps in high-and-low-export volume areas.
- 107114. Annual report on historical trends of the small business sector.
- 107115. Biennial report on accredited lenders program.
- 107116. Annual report on premier certified lenders program.
- 107117. Annual report on foreclosure and liquidation of loans under the certified development company program.
- 107118. Reports on disaster assistance.

1     **§ 107101. Comprehensive annual report on the state of small**  
2                     **business and on SBA operations**

3             (a) IN GENERAL.—As soon as practicable each fiscal year, the Adminis-  
4     trator shall submit to the President a comprehensive annual report.

5             (b) CONTENTS.—A report under subsection (a) shall include—

6                 (1) a description of the state of small business in the Nation as a  
7     whole and in each State;

8                 (2) a description of SBA's operations under this subtitle and subtitle  
9     II, including the general lending, disaster relief, Government regulation  
10    relief, procurement and property disposal, research and development,  
11    technical assistance, dissemination of data and information, and other  
12    functions under the jurisdiction of SBA during the previous fiscal year;

13                (3) recommendations—

14                    (A) for strengthening or improving the functions described in  
15     paragraph (2); or

16                    (B) when necessary or desirable to implement more effectively  
17     congressional policies and proposals, for establishing new or alter-  
18     native programs;

19                 (4) the names of the business concerns to which contracts are let  
20     and for which financing is arranged by the Administrator, including the  
21     amounts of the contracts and financings;

22                 (5) the proportion of loans and other assistance under subtitle II and  
23     provided to minority small business concerns, the goals of the Adminis-  
24     trator for the next fiscal year with respect to minority small business  
25     concerns, and recommendations for improving assistance to minority  
26     small business concerns under subtitle II; and

27                 (6)(A) a full and detailed account of operations under subtitle III  
28     that—

29                    (i) discloses the amount of losses sustained by the Government  
30     as a result of such operations during the preceding fiscal year; and

1 (ii) includes an estimate of the total losses that the Government  
2 can reasonably expect to incur as a result of such operations dur-  
3 ing the then-current fiscal year;

4 (B) full and detailed accounts relating to—

5 (i) the Administrator's recommendations with respect to the fea-  
6 sibility and organization of a small business capital bank to en-  
7 courage private financing of small business investment companies  
8 (as defined in section 301101 of this title) to replace Government  
9 financing of small business investment companies;

10 (ii) the Administrator's plans to ensure the provision of small  
11 business investment company financing to all areas of the country  
12 and to all eligible small business concerns, including steps taken  
13 to accomplish that;

14 (iii) steps taken by the Administrator to maximize recoupment  
15 of Government funds incident to the inauguration and administra-  
16 tion of the small business investment company program and to en-  
17 sure compliance with statutory and regulatory standards relating  
18 to the small business investment company program;

19 (iv) an accounting by the Director of the Office of Management  
20 and Budget with respect to Federal expenditures to business by  
21 executive agencies, specifying the proportion of those expenditures  
22 going to business concerns falling above and below small business  
23 size standards applicable to small business investment companies;

24 (v) an accounting by the Secretary of the Treasury with respect  
25 to tax revenues accruing to the Government from business con-  
26 cerns, specifying the source of those revenues by concerns falling  
27 above and below the small business size standards applicable to  
28 small business investment companies;

29 (vi) an accounting by the Secretary of the Treasury with respect  
30 to tax losses and increased tax revenues related to small business  
31 investment company financing of both individual and corporate  
32 business taxpayers;

33 (vii) recommendations of the Secretary of the Treasury with re-  
34 spect to additional tax incentives to improve and facilitate the op-  
35 erations of small business investment companies and to encourage  
36 the use of their financing facilities by eligible small business con-  
37 cerns;

38 (viii) a report from the Securities and Exchange Commission  
39 enumerating actions undertaken by the Securities and Exchange  
40 Commission to simplify and minimize the regulatory requirements  
41 governing small business investment companies under the Federal

1 securities laws and to eliminate overlapping regulation and juris-  
2 diction as between the Securities and Exchange Commission, SBA,  
3 and other agencies of the executive branch;

4 (ix) a report from the Securities and Exchange Commission  
5 with respect to actions taken to facilitate and stabilize the access  
6 of small business concerns (as defined in section 301101 of this  
7 title) to the securities markets; and

8 (x) actions undertaken by the Securities and Exchange Commis-  
9 sion to simplify compliance by small business investment compa-  
10 nies with the requirements of Investment Company Act of 1940  
11 (15 U.S.C. 80a–1 et seq.) and to facilitate the election to be taxed  
12 as regulated investment companies under section 851 of the Inter-  
13 nal Revenue Code of 1986 (26 U.S.C. 851); and

14 (C) a full and detailed description or account relating to—

15 (i) the number of small business investment companies the Ad-  
16 ministrator licensed under subtitle III, the number of licensees (as  
17 defined in section 301101 of this title) that have been placed in  
18 liquidation, and the number of licensees that have surrendered  
19 their licenses in the previous year, identifying the amount of lever-  
20 age (as defined in section 301101 of this title) each has received  
21 and the type of leverage instruments each has used;

22 (ii) the amount of leverage that each licensee received in the  
23 previous year and the types of leverage instruments each licensee  
24 used;

25 (iii) for each type of financing instrument, the sizes, geographic  
26 locations, and other characteristics of the small business invest-  
27 ment companies using the financing instrument, including the ex-  
28 tent to which small business investment companies have used the  
29 leverage from each instrument to make small business loans, eq-  
30 uity investments, or both; and

31 (iv) the frequency with which each type of investment instru-  
32 ment has been used in the current year and a comparison of the  
33 current year with previous years.

34 **§ 107102. Annual report on expenditures**

35 (a) IN GENERAL.—As soon as practicable each fiscal year, the Adminis-  
36 trator shall submit to the President a report showing as accurately as pos-  
37 sible for the fiscal year the amount of funds appropriated to SBA that the  
38 Administrator has expended in the conduct of each of the principal activities  
39 of SBA such as lending, procurement contracting, and providing technical  
40 and managerial aids.

(b) CONTENTS.—A report under subsection (a) shall disclose, separately for each type of loan made under sections 205103 to 205109 of this title and separately for all other loan programs, the number and amount of loans, the number of applications, the total amount applied for, and the number and amount of defaults for each type of equipment or service for which loans are authorized by subtitle II.

**§ 107103. Annual report on secondary market operations**

(a) IN GENERAL.—Not later than March 31 of each year, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the secondary market operations during the preceding calendar year.

(b) CONTENTS.—A report under subsection (a) shall include—

(1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid;

(2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums;

(3) the number and total dollar amount of pools formed;

(4) the number and total dollar amount of loans in each pool;

(5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable;

(6) the number, face value, interest rate, and terms of the trust certificates issued for each pool;

(7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and

(8) an analysis of the information reported under paragraphs (1) to (7) to assess the access of small business concerns to capital at reasonable rates and terms as a result of secondary market operations.

**§ 107104. Annual report on impact of authority to impose secondary market fees**

(a) DEFINITION OF SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY MINORITIES.—In this section, the term “small business concerns owned and controlled by minorities” includes a small business concern that is owned and controlled by individuals belonging to 1 of the designated groups listed in subclause (1)(B) of the contract clause described in section 243101(c) of this title.

(b) STUDY, MONITORING, AND EVALUATION.—The Administrator shall study, monitor, and evaluate the impact of subparagraphs (A) to (E) of section 103202(d)(5) of this title on—

(1) the ability of small business concerns owned and controlled by minorities, small business concerns owned and controlled by women, and other small business concerns to obtain financing; and

(2) the effectiveness, viability, and growth of the secondary market authorized by section 103202(c) of this title.

(c) ANNUAL REPORTS.—

(1) IN GENERAL.—The Administrator shall annually submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing the Administrator's findings and recommendations on the impact described in subsection (b), specifically including changes in the interest rates on financings provided to small business concerns owned and controlled by minorities, small business concerns owned and controlled by women, and other small business concerns through the use of the secondary market.

(2) FINDINGS AND RECOMMENDATIONS.—The report under paragraph (1) shall state findings and recommendations separately for the ethnic and gender components of the small business concerns described in paragraph (1).

**§ 107105. Annual report on needs of small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans**

(a) IN GENERAL.—The Administrator shall annually submit to the Committee on Small Business and Entrepreneurship and Committee on Veterans Affairs of the Senate and the Committee on Small Business and Committee on Veterans Affairs of the House of Representatives a report on the needs of small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans.

(b) CONTENTS.—A report under subsection (a) shall include information on—

(1)(A) the availability of SBA programs for small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans; and

(B) the degree of utilization of those programs by small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans during the preceding

12-month period, including statistical information on such utilization as compared with the small business community as a whole;

(2) the percentage and dollar value of Federal contracts awarded to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans during the preceding 12-month period, based on the data collected under section 275113 of this title; and

(3) proposals to improve the access of small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans to the assistance made available by the United States.

**§ 107106. Annual report on contract bundling**

(a) IN GENERAL.—In March of each year, using information maintained under section 251105(e) of this title, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on contract bundling.

(b) CONTENTS.—A report under subsection (a) shall include—

(1) information on the number (arranged by industrial classification) of small business concerns displaced as prime contractors as a result of the award of bundled contracts by Federal agencies; and

(2) a description of the activities with respect to previously bundled contracts of each Federal agency during the preceding year, including—

(A) information on the number and total dollar amount of all contract requirements that were bundled; and

(B) with respect to each bundled contract, information on—

(i) the justification for the bundling of contract requirements;

(ii) the cost savings realized by bundling the contract requirements over the life of the contract;

(iii) the extent to which maintaining the bundled status of contract requirements is projected to result in continued cost savings;

(iv) the extent to which the bundling of contract requirements complied with the procuring agency's small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar value previously awarded to small business concerns as prime contractors; and



(v) the impact of the bundling of contract requirements on small business concerns unable to compete as prime contractors for the consolidated requirements and on the industries of such small business concerns, including a description of any changes to the proportion of any such industry that is composed of small business concerns.

**§ 107107. Annual report on business development program**

(a) IN GENERAL.—Not later than April 30 of each year, the Administrator shall submit to Congress a report on the business development program.

(b) CONTENTS.—

(1) NET WORTH OF PARTICIPATING INDIVIDUALS.—A report under subsection (a) shall disclose—

(A) the average personal net worth of individuals who own and control small business concerns that were initially certified for participation in the business development program during the immediately preceding fiscal year; and

(B) the dollar distribution of net worths, at \$50,000 increments, of all such individuals determined to be socially and economically disadvantaged.

(2) DESCRIPTION AND ESTIMATE OF BENEFITS AND COSTS.—A report under subsection (a) shall include a description and estimate of the benefits and costs that have accrued to the economy and the Government in the immediately preceding fiscal year due to the operations of the program participants that were performing contracts awarded under the business development program.

(3) PROGRAM PARTICIPANTS EXITING THE PROGRAM.—

(A) IN GENERAL.—A report under subsection (a) shall include a compilation and evaluation of the former program participants that exited the program during the immediately preceding 3 fiscal years.

(B) CONTENTS.—The compilation and evaluation under subparagraph (A) shall—

(i)(I) disclose the number of former program participants that are actively engaged in business operations; and

(II) for those former program participants, separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of the former program participants;

1 (ii)(I) disclose the number of former program participants  
2 that have ceased or substantially curtailed business oper-  
3 ations; and

4 (II) describe the reasons for the cessation or curtailment;  
5 and

6 (iii) disclose the number of former program participants  
7 that have been acquired by other business concerns or organi-  
8 zations owned and controlled by other than socially and eco-  
9 nomically disadvantaged individuals.

10 (4) LIST OF PROGRAM PARTICIPANTS.—A report under subsection  
11 (a) shall include a list of all program participants that participated in  
12 the program during the preceding fiscal year that discloses, by State  
13 and by SBA region, for each program participant—

14 (A) the name of the program participant;

15 (B) the race or ethnicity and gender of the disadvantaged own-  
16 ers;

17 (C) the dollar value of all contracts received in the preceding  
18 year;

19 (D) the dollar amount of advance payments received under con-  
20 tracts awarded under the business development program; and

21 (E) a description (including (if appropriate) an estimate of the  
22 dollar value) of all benefits received under sections 205111 and  
23 233127 of this title during the preceding year.

24 (5) CONTRACT AND OPTION VALUE.—A report under subsection (a)  
25 shall include the total dollar value of contracts and options awarded  
26 under this chapter during the preceding fiscal year—

27 (A) expressed as an absolute amount;

28 (B) expressed as a percentage of total sales—

29 (i) of all program participants during that year; and

30 (ii) of program participants in each of the 9 years of pro-  
31 gram participation; and

32 (C) expressed, at such dollar increments as the Administrator  
33 considers appropriate, for each 6-digit North American Industry  
34 Classification System code under which the contracts and options  
35 were classified.

36 (6) ADDITIONAL RESOURCES OR AUTHORITIES.—A report under sub-  
37 section (a) shall include a description of such additional resources or  
38 program authorities as may be required to provide the types of services  
39 needed over the next 2-year period to service the expected portfolio of  
40 program participants.

1    **§ 107108. Annual report on contract participation goals**

2       (a) REPORT BY THE ADMINISTRATOR.—

3           (1) IN GENERAL.—The Administrator shall annually—

4               (A) compile and analyze the reports submitted by Federal agen-  
5               cies under section 251106(c) of this title; and

6               (B) submit to the President and the Committee on Small Busi-  
7               ness and Entrepreneurship of the Senate and the Committee on  
8               Small Business of the House of Representatives the compilation  
9               and analysis.

10          (2) CONTENTS.—The compilation and analysis shall include—

11               (A)(i) the Governmentwide goals for participation by qualified  
12               HUBZone small business concerns, small business concerns owned  
13               and controlled by service-disabled veterans, small business con-  
14               cerns owned and controlled by socially and economically disadvan-  
15               taged individuals, small business concerns owned and controlled by  
16               women, and other small business concerns; and

17               (ii) the performance in attaining those goals;

18               (B)(i) the goals in effect for each Federal agency; and

19               (ii) each Federal agency's performance in attaining those goals;

20               (C)(i) an analysis of any failure to achieve the Governmentwide  
21               goals or any Federal agency goals; and

22               (ii) the actions planned by each Federal agency and approved  
23               by the Administrator to achieve the goals in the succeeding fiscal  
24               year;

25               (D) for each Federal agency and on a Governmentwide basis,  
26               the number and dollar value of contracts awarded to qualified  
27               HUBZone small business concerns, small business concerns owned  
28               and controlled by service-disabled veterans, small business con-  
29               cerns owned and controlled by socially and economically disadvan-  
30               taged individuals, small business concerns owned and controlled by  
31               women, and other small business concerns through—

32                   (i) noncompetitive negotiation;

33                   (ii) competition restricted to small business concerns owned  
34                   and controlled by socially and economically disadvantaged in-  
35                   dividuals;

36                   (iii) competition restricted to small business concerns; and

37                   (iv) unrestricted competitions; and

38               (E) the number and dollar value of subcontracts awarded to  
39               qualified HUBZone small business concerns, small business con-  
40               cerns owned and controlled by service-disabled veterans, small  
41               business concerns owned and controlled by socially and economi-

1 cally disadvantaged individuals, small business concerns owned  
2 and controlled by women, and other small business concerns.

3 (b) REPORT BY THE PRESIDENT.—The President shall include the infor-  
4 mation required by subsection (a) in each annual report to Congress on the  
5 state of small business under section 491101(c) of this title.

6 **§ 107109. Annual report on cost savings from breakout pro-**  
7 **curement center representatives**

8 The Administrator shall annually submit to Congress a report that—

9 (1) describes the cost savings achieved during the year covered by  
10 the report through the efforts of breakout procurement center rep-  
11 resentatives assigned to major procurement centers under section  
12 251110 of this title;

13 (2) contains an evaluation of the extent to which competition has  
14 been increased as a result of those efforts; and

15 (3) includes such other information relating to breakout procurement  
16 center representatives as the Administrator considers appropriate.

17 **§ 107110. Reports on SBIR programs, STTR programs, and**  
18 **the FAST program**

19 (a) SBIR PROGRAMS AND STTR PROGRAMS.—

20 (1) ADMINISTRATOR.—

21 (A) IN GENERAL.—The Administrator, not less than annually,  
22 shall submit to the Committee on Small Business and Entrepre-  
23 neurship of the Senate and the Committee on Science and Com-  
24 mittee on Small Business of the House of Representatives a report  
25 on the SBIR programs and STTR programs of the Federal agen-  
26 cies and the Administrator's information and monitoring efforts  
27 relating to the SBIR programs and STTR programs.

28 (B) CONTENTS.—A report under subparagraph (A) shall in-  
29 clude—

30 (i) the data on output and outcomes collected under sec-  
31 tions 263102(a)(8) and 263202(9) of this title;

32 (ii) the number of proposals received from, and the number  
33 and total amount of awards to, HUBZone small business con-  
34 cerns and firms with venture capital, hedge fund, or private  
35 equity firm investment (including those that are majority-  
36 owned by multiple venture capital operating companies, hedge  
37 funds, or private equity firms) under each of the SBIR pro-  
38 grams and STTR programs;

39 (iii) a description of the extent to which each Federal agen-  
40 cy is increasing outreach and awards to firms owned and con-  
41 trolled by women or by socially or economically disadvantaged

1 individuals under each of the SBIR programs and STTR pro-  
2 grams;

3 (iv) general information about the implementation of, and  
4 compliance with the allocation of funds required under, sec-  
5 tion 263111 of this title for firms owned that are majority-  
6 owned by venture capital operating companies, hedge funds,  
7 or private equity firms and participating in the SBIR pro-  
8 gram;

9 (v) a detailed description of appeals of phase III awards  
10 and notices of noncompliance with the SBIR policy directive  
11 and the STTR policy directive filed by the Administrator with  
12 Federal agencies;

13 (vi) an accounting of funds, initiatives, and outcomes under  
14 the commercialization readiness program under section  
15 263314(a) of this title;

16 (vii) a description of the extent to which Federal agencies  
17 are providing in a timely manner information needed to main-  
18 tain the database under section 263301 of this title;

19 (viii) for each phase III award—

20 (I) the name of the agency or component of the agen-  
21 cy or the non-Federal source of capital that made the  
22 phase III award;

23 (II) the name of the small business concern or individ-  
24 ual that received the phase III award; and

25 (III) the dollar amount of the phase III award;

26 (ix) the manufacturing activity information contained in re-  
27 ports under paragraph (3);

28 (x) any data submitted under section 263109(d) of this  
29 title and a discussion of the compliance of each Federal agen-  
30 cy that makes an award under this section 263109 of this  
31 title during the fiscal year with the maximum percentages  
32 under 263109(a) of this title;

33 (xi) the information on award amounts exceeding guidelines  
34 described in section 263308(b) of this title;

35 (xii) the information on technology insertion submitted  
36 under section 263314(a)(6)(C) of this title; and

37 (xiii) the information on timing of final decisions on pro-  
38 posals and releases of funding described in section 263316 of  
39 this title.

40 (2) SBIR AGENCY HEADS AND STTR AGENCY HEADS.—

(A) METRICS.—The head of an SBIR agency or STTR agency shall develop metrics to evaluate the effectiveness and the benefit to the people of the United States of the SBIR program and the STTR program of the Federal agency that—

(i) are science-based and statistically driven;

(ii) reflect the mission of the Federal agency; and

(iii) include factors relating to the economic impact of the SBIR program or STTR program.

(B) EVALUATION.—The head of an SBIR agency or STTR agency shall conduct an annual evaluation using the metrics developed under subparagraph (A) of—

(i) the SBIR program and STTR program of the SBIR agency or STTR agency; and

(ii) the benefits to the people of the United States of the SBIR program and the STTR program of the Federal agency.

(C) REPORT.—

(i) IN GENERAL.—The head of an SBIR agency or STTR agency shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and Committee on Science, Space, and Technology of the House of Representatives and to the Administrator an annual report describing in detail the results of an evaluation conducted under subparagraph (B).

(ii) PUBLIC AVAILABILITY OF REPORT.—The head of an SBIR agency or STTR agency shall make a report submitted under clause (i) available to the public online.

(3) HEADS OF AGENCIES THAT MAKE MORE THAN \$50,000,000 IN AWARDS.—Not later than October 1, 2013, and annually thereafter, the head of a Federal agency that makes more than \$50,000,000 in awards under the SBIR program and STTR program of the agency combined shall submit to the Administrator, for inclusion in the annual report under paragraph (1), information that includes—

(A) a description of efforts undertaken by the agency head to enhance United States manufacturing activities;

(B) a comprehensive description of the actions undertaken each year by the agency head in carrying out the SBIR program or STTR program of the agency in support of Executive Order 13329 (69 Fed. Reg. 9181);

(C) an assessment of the effectiveness of the actions described in subparagraph (B) at enhancing the research and development of United States manufacturing technologies and processes;

(D) a description of efforts by vendors selected to provide discretionary technical assistance under section 263313 of this title to help small business concerns that participate in the SBIR program or STTR program manufacture in the United States; and

(E) recommendations that the program managers of the SBIR program or STTR program consider appropriate for additional actions to increase the effectiveness of enhancing manufacturing activities.

(4) INSPECTORS GENERAL.—Not later than October 1 of each year, the Inspector General of an SBIR participating agency or STTR participating agency shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives a report that—

(A) states the number of cases referred to the Inspector General in the preceding year that related to fraud, waste, or abuse with respect to the SBIR program or STTR program;

(B) describes the actions taken in each case referred to in subparagraph (A) if fraud, waste, or abuse was determined to have occurred;

(C) if no action was taken in a case referred to subparagraph (A) and fraud, waste, or abuse was determined to have occurred, states the justification for not taking taken; and

(D) makes an accounting of the funds used to address fraud, waste, and abuse, including a description of personnel and resources funded and funds that were recovered or saved.

(5) COMPTROLLER GENERAL.—

(A) IMPACT OF REQUIREMENTS RELATING TO VENTURE CAPITAL OPERATING COMPANY, HEDGE FUND, AND PRIVATE EQUITY FIRM INVOLVEMENT.—Not later than December 31, 2014, and every 3 years thereafter, the Comptroller General of the United States shall—

(i) conduct a study of the impact of requirements relating to venture capital operating company, hedge fund, and private equity firm involvement under this division; and

(ii) submit to Congress a report regarding the study conducted under clause (i).

1 (B) FRAUD, WASTE, AND ABUSE.—Not later than December 31,  
2 2012, to establish a baseline of changes made to the program to  
3 fight fraud, waste, and abuse, and every 4 years thereafter to  
4 evaluate the effectiveness of the agency strategies, the Comptroller  
5 General of the United States shall—

6 (i) conduct a study that evaluates—

7 (I) the implementation by each SBIR participating  
8 agency and STTR participating agency of the amend-  
9 ments to the SBIR policy directives and the STTR policy  
10 directive made pursuant to section 263319 of this title;

11 (II) the effectiveness of the management information  
12 system of each SBIR participating agency and STTR  
13 participating agency in identifying duplicative SBIR  
14 projects and STTR projects;

15 (III) the effectiveness of the risk management strate-  
16 gies of each SBIR participating agency and STTR par-  
17 ticipating agency in identifying areas of the SBIR pro-  
18 gram or the STTR program that are at high risk for  
19 fraud;

20 (IV) technological tools that may be used to detect  
21 patterns of behavior that may indicate fraud by appli-  
22 cants to the SBIR program or the STTR program;

23 (V) the success of each SBIR participating agency and  
24 STTR participating agency in reducing fraud, waste, and  
25 abuse in the SBIR program or the STTR program of the  
26 Federal agency;

27 (VI) the extent to which the Inspector General of each  
28 SBIR participating agency and STTR participating  
29 agency effectively conducts investigations, audits, inspec-  
30 tions, and outreach relating to the SBIR program and  
31 STTR program of the SBIR participating agency or  
32 STTR participating agency; and

33 (VII) the effectiveness of the Government and public  
34 databases described in section 263301 of this title in re-  
35 ducing vulnerabilities of the SBIR program and STTR  
36 program to fraud, waste, and abuse, particularly with re-  
37 spect to Federal agencies funding duplicative proposals  
38 and business concerns falsifying information in propos-  
39 als; and

40 (ii) submit to the Committee on Small Business and Entre-  
41 preneurship of the Senate, the Committee on Small Business



1 and Committee on Science, Space, and Technology of the  
2 House of Representatives, and the head of each SBIR partici-  
3 pating agency and STTR participating agency a report on the  
4 results of the study conducted under clause (i).

5 (6) NATIONAL RESEARCH COUNCIL.—

6 (A) STUDY AND RECOMMENDATIONS.—The head of each agency  
7 with a budget of more than \$50,000,000 for its SBIR program  
8 for fiscal year 1999, in consultation with the Administrator, shall  
9 cooperatively enter into an agreement with the National Academy  
10 of Sciences for the National Research Council to—

11 (i) conduct a comprehensive study of how the SBIR pro-  
12 gram has stimulated technological innovation and used small  
13 businesses to meet Federal research and development needs,  
14 including—

15 (I) a review of the value to the Federal research agen-  
16 cies of the research projects being conducted under the  
17 SBIR program, and of the quality of research being con-  
18 ducted by small businesses participating under the SBIR  
19 program, including a comparison of the value of projects  
20 conducted under the SBIR program with those funded  
21 by other Federal research and development expenditures;

22 (II) to the extent practicable, an evaluation of the eco-  
23 nomic benefits achieved by the SBIR program, including  
24 the economic rate of return, and a comparison of the  
25 economic benefits, including the economic rate of return,  
26 achieved by the SBIR program with the economic bene-  
27 fits, including the economic rate of return, of other Fed-  
28 eral research and development expenditures;

29 (III) an evaluation of the noneconomic benefits  
30 achieved by the SBIR program over the life of the pro-  
31 gram;

32 (IV) a comparison of the allocation for fiscal year  
33 2000 of Federal research and development funds to  
34 small businesses with that allocation for fiscal year 1983,  
35 and an analysis of the factors that have contributed to  
36 the allocation; and

37 (V) an analysis of whether Federal agencies, in fulfill-  
38 ing their procurement needs, are making sufficient effort  
39 to use small businesses that have completed a phase II  
40 award under the SBIR program; and

41 (ii) make recommendations with respect to—

(I) measures of outcomes for strategic plans submitted under section 306 of title 5 and performance plans submitted under section 1115 of title 31 of each SBIR participating agency;

(II) whether companies that can demonstrate project feasibility, but that have not received a phase I award, should be eligible for phase II awards, and the potential impact of such awards on the competitive selection process of the program;

(III) whether the Federal Government should be permitted to recoup some or all of its expenses if a controlling interest in a company receiving an SBIR award is sold to a foreign company or to a company that is not a small business concern;

(IV) how to increase the use by the Federal Government in its programs and procurements of technology-oriented small business concerns; and

(V) improvements to the SBIR program, if any are considered appropriate.

(B) PARTICIPATION BY SMALL BUSINESS CONCERNS.—

(i) IN GENERAL.—In a manner consistent with law and with National Research Council study guidelines and procedures, knowledgeable individuals from small business concerns with experience in the SBIR program shall be included—

(I) in any panel established by the National Research Council for the purpose of performing the study conducted under this paragraph; and

(II) among those who are asked by the National Research Council to peer review the study.

(ii) CONSULTATION.—To ensure that the concerns of small business concerns are appropriately considered under this subparagraph, the National Research Council shall consult with and consider the views of the Office of Technology and the Office of Advocacy of the SBA and other interested parties, including entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns.

(C) REPORT.—The National Research Council shall submit to the heads of agencies entering into an agreement under this paragraph and to the Committee on Science, Space, and Technology and Committee on Small Business of the House of Representatives

1 and the Committee on Small Business and Entrepreneurship of  
2 the Senate—

3 (i) not later than December 21, 2003, a report including  
4 the results of the study conducted under subparagraph (A)(i)  
5 and recommendations made under subparagraph (A)(ii); and

6 (2) not later than December 21, 2006, an update of the  
7 report.

8 (D) EXTENSIONS AND ENHANCEMENTS OF AUTHORITY.—

9 (i) IN GENERAL.—In consultation with the Administrator,  
10 the head of each agency with a budget of more than  
11 \$50,000,000 for its SBIR program for fiscal year 1999 shall  
12 cooperatively enter into an agreement with the National  
13 Academy of Sciences for the National Research Council to,  
14 not later than December 31, 2014, and every 4 years there-  
15 after—

16 (I) continue the most recent study under this para-  
17 graph relating to the issues described in subclauses (I),  
18 (II), (III), and (V) of subparagraph (A)(i);

19 (II) conduct a comprehensive study of how the STTR  
20 program has stimulated technological innovation and  
21 technology transfer, including—

22 (aa) a review of the collaborations created be-  
23 tween small business concerns and research institu-  
24 tions, including an evaluation of the effectiveness of  
25 the STTR program in stimulating new collabora-  
26 tions and any obstacles that may prevent or inhibit  
27 the creation of such collaborations;

28 (bb) an evaluation of the effectiveness of the  
29 STTR program at transferring technology and ca-  
30 pabilities developed through Federal funding;

31 (cc) to the extent practicable, an evaluation of the  
32 economic benefits achieved by the STTR program,  
33 including the economic rate of return;

34 (dd) an analysis of how Federal agencies are  
35 using small business concerns that have completed  
36 phase II under the STTR program to fulfill their  
37 procurement needs;

38 (ee) an analysis of whether additional funds could  
39 be employed effectively by the STTR program; and

40 (ff) an assessment of the systems and minimum  
41 performance standards relating to commercialization

1 success established under section 263322 of this  
2 title;

3 (III) make recommendations with respect to the issues  
4 described in subclauses (I), (IV), and (V) of subpara-  
5 graph (A)(ii) and subclause (II) of this clause; and

6 (IV) estimate, to the extent practicable, the number of  
7 jobs created by the SBIR program or STTR program of  
8 the agency.

9 (ii) CONSULTATION.—An agreement under clause (i) shall  
10 require the National Research Council to ensure that there is  
11 participation by and consultation with small business con-  
12 cerns, the Administrator, and other interested parties as de-  
13 scribed in subparagraph (B).

14 (iii) REPORTING.—An agreement under clause (i) shall re-  
15 quire that not later than December 31, 2015, and every 4  
16 years thereafter, the National Research Council shall submit  
17 to the head of the agency entering into the agreement, the  
18 Committee on Small Business and Entrepreneurship of the  
19 Senate, and the Committee on Small Business and the Com-  
20 mittee on Science, Space, and Technology of the House of  
21 Representatives a report regarding the study conducted under  
22 clause (i) and containing the recommendations described in  
23 clause (i).

24 (b) FAST PROGRAM.—The Administrator shall annually submit to the  
25 Committee on Small Business and Entrepreneurship of the Senate and the  
26 Committee on Science and Committee on Small Business of the House of  
27 Representatives a report regarding—

28 (1) the number and amount of awards provided and cooperative  
29 agreements entered into under the FAST program (as defined in sec-  
30 tion 263305 of this title) during the preceding year;

31 (2) a list of recipients under section 263305 of this title, including  
32 their location and the activities being performed with the awards made  
33 or under the cooperative agreements entered into; and

34 (3) the mentoring networks and the mentoring database, as provided  
35 for under section 263305(f) of this title, including—

36 (A) the status of the inclusion of mentoring information in the  
37 database required by section 263301 of this title; and

38 (B) the status of the implementation and description of the  
39 usage of the mentoring networks.

1    **§ 107111. Annual report on women’s business center pro-**  
2                   **gram**

3           (a) IN GENERAL.—The Administrator shall annually submit to the Com-  
4    mittee on Small Business and Entrepreneurship of the Senate and the Com-  
5    mittee on Small Business of the House of Representatives a report on the  
6    effectiveness of all projects conducted under chapter 273.

7           (b) CONTENTS.—A report under subsection (a) shall include information  
8    concerning, with respect to each women’s business center—

9           (1) the number of individuals receiving assistance;

10          (2) the number of startup business concerns formed;

11          (3) the gross receipts of assisted business concerns;

12          (4) the employment increases or decreases of assisted business con-  
13    cerns;

14          (5) to the maximum extent practicable, increases or decreases in  
15    profits of assisted business concerns; and

16          (6) the most recent analysis and determination made by the Admin-  
17    istrator under section 273107(a)(2) of this title.

18    **§ 107112. Annual report of the Associate Administrator for**  
19                   **International Trade**

20           The Associate Administrator for International Trade shall annually sub-  
21    mit to the Committee on Small Business and Entrepreneurship of the Sen-  
22    ate and the Committee on Small Business of the House of Representatives  
23    a report that contains—

24          (1) a description of the progress of the Office in implementing the  
25    requirements of chapter 277;

26          (2) a detailed account of the results of export growth activities of  
27    the Administrator, including the activities of each SBA district office  
28    and SBA regional office, based on the performance measures described  
29    in section 277.108 of this title;

30          (3) an estimate of the total number of jobs created or retained as  
31    a result of export assistance provided by the Administrator and re-  
32    source partners of the Administrator;

33          (4) for any travel by the staff of the Office of International Trade,  
34    the destination of the travel and the benefits to SBA and to small busi-  
35    ness concerns resulting from the travel; and

36          (5) a description of the participation by the Office of International  
37    Trade in trade negotiations.

38    **§ 107113. Biennial report on filling gaps in high-and-low-ex-**  
39                   **port volume areas**

40           Every 2 years, the Administrator shall—

41          (1) conduct a study of—

- 1 (A) the volume of exports for each State;
- 2 (B) the availability of export finance specialists in each State;
- 3 (C) the number of exporters in each State that are small busi-
- 4 ness concerns;
- 5 (D) the percentage of exporters in each State that are small
- 6 business concerns;
- 7 (E) the change, if any, in the number of exporters that are
- 8 small business concerns in each State—
  - 9 (i) for the 1st study conducted under this paragraph, dur-
  - 10 ing the 10-year period ending on September 27, 2010; and
  - 11 (ii) for each subsequent study, during the 10-year period
  - 12 ending on the date on which the study is commenced;
- 13 (F) the total value of the exports in each State by small busi-
- 14 ness concerns;
- 15 (G) the percentage of the total volume of exports in each State
- 16 that is attributable to small business concerns; and
- 17 (H) the change, if any, in the percentage of the total volume
- 18 of exports in each State that is attributable to small business con-
- 19 cerns—
  - 20 (i) for the 1st study conducted under this paragraph, dur-
  - 21 ing the 10-year period ending on September 27, 2010; and
  - 22 (ii) for each subsequent study, during the 10-year period
  - 23 ending on the date on which the study is commenced; and
- 24 (2) submit to the Committee on Small Business and Entrepreneur-
- 25 ship of the Senate and the Committee on Small Business of the House
- 26 of Representatives a report containing—
  - 27 (A) the results of the study under paragraph (1);
  - 28 (B) to the extent practicable, a recommendation regarding how
  - 29 to eliminate gaps between the supply of and demand for export fi-
  - 30 nance specialists in the 15 States that have the greatest volume
  - 31 of exports, based on the most recent data available from the De-
  - 32 partment of Commerce;
  - 33 (C) to the extent practicable, a recommendation regarding how
  - 34 to eliminate gaps between the supply of and demand for export fi-
  - 35 nance specialists in the 15 States that have the lowest volume of
  - 36 exports, based on the most recent data available from the Depart-
  - 37 ment of Commerce; and
  - 38 (D) such additional information as the Administrator deter-
  - 39 mines is appropriate.

1   **§ 107114. Annual report on historical trends of the small**  
2                   **business sector**

3       The Administrator shall publish annually a report giving a comparative  
4   analysis and interpretation of the historical trends of the small business sec-  
5   tor as reflected by the data acquired under section 103203 of this title.

6   **§ 107115. Biennial report on accredited lenders program**

7       The Administrator shall biennially submit to the Committee on Small  
8   Business and Entrepreneurship of the Senate and the Committee on Small  
9   Business of the House of Representatives a report on the implementation  
10   of section 331107 of this title that includes data on the number of qualified  
11   development companies (as defined in section 331101 of this title) des-  
12   ignated as accredited lenders, their debenture guarantee volume, their loss  
13   rates, the average processing time on their guarantee applications, and such  
14   other information as the Administrator considers appropriate.

15   **§ 107116. Annual report on premier certified lenders pro-**  
16                   **gram**

17       (a) IN GENERAL.—The Administrator shall annually submit to the Com-  
18   mittee on Small Business and Entrepreneurship of the Senate and the Com-  
19   mittee on Small Business of the House of Representatives a report on the  
20   implementation of section 331108 of this title.

21       (b) CONTENTS.—A report under subsection (a) shall include—

22           (1) the number of certified development companies designated as  
23       premier certified lenders;

24           (2) the debenture guarantee volume of those certified development  
25       companies;

26           (3) a comparison of the loss rate of premier certified lenders with  
27       the loss rate of accredited lenders under section 331107 of this title  
28       and the loss rate of other certified development companies under chap-  
29       ter 331, specifically comparing default rates and recovery rates on liq-  
30       uidations; and

31           (4) such other information as the Administrator considers appro-  
32       priate.

33   **§ 107117. Annual report on foreclosure and liquidation of**  
34                   **loans under the certified development company**  
35                   **program**

36       (a) IN GENERAL.—Based on information provided by qualified develop-  
37   ment companies (as defined in section 331101 of this title) and SBA, the  
38   Administrator shall annually submit to the Committee on Small Business  
39   and Entrepreneurship of the Senate and the Committee on Small Business  
40   of the House of Representatives a report on the results of delegation of au-  
41   thority under section 331109 of this title.

- 1 (b) CONTENTS.—A report under subsection (a)—
- 2 (1) shall disclose, with respect to each loan foreclosed or liquidated
- 3 by a qualified development company under section 331109 of this title,
- 4 or for which losses were otherwise mitigated by the qualified develop-
- 5 ment company pursuant to a workout plan under that section—
- 6 (A) the total cost of the project financed with the loan;
- 7 (B) the total original dollar amount guaranteed by the Adminis-
- 8 trator;
- 9 (C) the total dollar amount of the loan at the time of liquida-
- 10 tion, foreclosure, or mitigation of loss;
- 11 (D) the total dollar losses resulting from the liquidation, fore-
- 12 closure, or mitigation of loss; and
- 13 (E) the total recoveries resulting from the liquidation, fore-
- 14 closure, or mitigation of loss, both as a percentage of the amount
- 15 guaranteed and the total cost of the project financed;
- 16 (2) shall disclose, with respect to each qualified development com-
- 17 pany to which authority is delegated under section 331109 of this title,
- 18 the totals of each of the amounts described in subparagraphs (A) to
- 19 (E) of paragraph (1);
- 20 (3) shall disclose, with respect to all loans subject to foreclosure, liq-
- 21 uidation, or mitigation under section 331109 of this title, the totals of
- 22 each of the amounts described in subparagraphs (A) to (E) of para-
- 23 graph (1);
- 24 (4) include a comparison between—
- 25 (A) the information provided under paragraph (3) with respect
- 26 to the 12-month period preceding the date on which the report is
- 27 submitted; and
- 28 (B) the same information with respect to loans foreclosed and
- 29 liquidated, or otherwise treated, by the Administrator during the
- 30 same period; and
- 31 (5)(A) shall disclose the number of times that the Administrator has
- 32 failed to—
- 33 (i) approve or reject a liquidation plan in accordance with sub-
- 34 paragraph (A)(ii) or a workout plan in accordance with subpara-
- 35 graph (C)(ii) of section 331109(c)(2) of this title; or
- 36 (ii) approve or deny a request for purchase of indebtedness
- 37 under section 331109(c)(2)(B)(ii) of this title; and
- 38 (B) include specific information regarding—
- 39 (i) the reasons for the Administrator's failure; and
- 40 (ii) any delays that resulted.



1     **§ 107118. Reports on disaster assistance**

2       (a) DEFINITIONS.—In this section:

3           (1) MAJOR DISASTER UPDATE PERIOD.—The term “major disaster  
4       update period”, with respect to a major disaster, means the period be-  
5       ginning on the date on which the President declares the major disaster  
6       (including any major disaster relating to which the Administrator de-  
7       clares eligibility for additional disaster assistance under 221108 of this  
8       title) and ending on the date on which the declaration terminates.

9           (2) STATE.—The term “State” means a State of the United States,  
10       the District of Columbia, Puerto Rico, the Northern Mariana Islands,  
11       the Virgin Islands, Guam, American Samoa, and any territory or pos-  
12       session of the United States.

13       (b) MONTHLY ACCOUNTING REPORTS FOR MAJOR DISASTERS.—

14           (1) REPORTING REQUIREMENTS.—Not later than the 5th business  
15       day of each month during the applicable period for a major disaster,  
16       the Administrator shall submit to the Committee on Small Business  
17       and Entrepreneurship and Committee on Appropriations of the Senate  
18       and the Committee on Small Business and Committee on Appropria-  
19       tions of the House of Representatives a report on the operation of the  
20       disaster assistance programs for that major disaster during the preced-  
21       ing month.

22           (2) CONTENTS.—A report under paragraph (1) shall include—

23               (A)(i) the daily average lending volume, in number of loans and  
24               dollars, of each category of loan; and

25               (ii) the percentage by which each category has increased or de-  
26               creased since the previous report;

27               (B)(i) the weekly average lending volume, in number of loans  
28               and dollars, of each category of loan; and

29               (ii) the percentage by which each category has increased or de-  
30               creased since the previous report;

31               (C)(i) the amount of funding spent over the month for each cat-  
32               egory of loan, both in amount of appropriations and in program  
33               level; and

34               (ii) the percentage by which each category has increased or de-  
35               creased since the previous report;

36               (D)(i) the amount of funding available for loans, in amount of  
37               appropriations and in program level, for each category of loan; and

38               (ii) the percentage by which each category has increased or de-  
39               creased since the previous report, noting the source of any addi-  
40               tional funding;

1 (E) an estimate of how long the available funding for loans will  
2 last, based on the spending rate;

3 (F)(i) the amount of funding spent over the month for staff en-  
4 gaged in the operation of the disaster assistance programs;

5 (ii) the number of staff engaged in the operation of the disaster  
6 assistance programs; and

7 (iii) the percentage by which the funding and number of staff  
8 engaged in the operation of the disaster assistance programs have  
9 increased or decreased since the previous report;

10 (G)(i) the amount of funding spent over the month for adminis-  
11 trative costs of the disaster assistance programs; and

12 (ii) the percentage by which spending for those administrative  
13 costs has increased or decreased since the previous report;

14 (H)(i) the amount of funding available for salaries and expenses  
15 combined for operation of the disaster assistance programs; and

16 (ii) the percentage by which that funding has increased or de-  
17 creased since the previous report, noting the source of any addi-  
18 tional funding; and

19 (I) an estimate of how long the available funding for those sala-  
20 ries and expenses will last, based on the spending rate.

21 (c) WEEKLY DISASTER UPDATES FOR MAJOR DISASTERS.—

22 (1) IN GENERAL.—Each week during a major disaster update period,  
23 the Administrator shall submit to the Committee on Small Business  
24 and Entrepreneurship of the Senate and the Committee on Small Busi-  
25 ness of the House of Representatives a report on the operation of the  
26 disaster assistance programs for the major disaster area.

27 (2) CONTENTS.—A report under paragraph (1) shall include—

28 (A)(i) the number of SBA staff performing loan processing,  
29 field inspection, and other duties for the major disaster; and

30 (ii) the allocations of the staff in the disaster field offices, disas-  
31 ter recovery centers, workshops, and other SBA offices nationwide;

32 (B)(i) the daily number of applications received from applicants  
33 in the major disaster area; and

34 (ii) a breakdown of that number by State;

35 (C)(i) the daily number of applications pending application  
36 entry from applicants in the major disaster area; and

37 (ii) a breakdown of that number by State;

38 (D)(i) the daily number of applications withdrawn by applicants  
39 in the major disaster area; and

40 (ii) a breakdown of that number by State;

- 1 (E)(i) the daily number of applications summarily declined by  
2 the Administrator from applicants in the major disaster area; and  
3 (ii) a breakdown of that number by State;
- 4 (F)(i) the daily number of applications declined by the Adminis-  
5 trator from applicants in the major disaster area; and  
6 (ii) a breakdown of that number by State;
- 7 (G)(i) the daily number of applications in process from appli-  
8 cants in the major disaster area; and  
9 (ii) a breakdown of that number by State;
- 10 (H)(i) the daily number of applications approved by the Admin-  
11 istrator from applicants in the major disaster area; and  
12 (ii) a breakdown of that number by State;
- 13 (I)(i) the daily dollar amount of applications approved by the  
14 Administrator from applicants in the major disaster area; and  
15 (ii) a breakdown of that number by State;
- 16 (J)(i) the daily number of loans disbursed, both partially and  
17 fully, by the Administrator to applicants in the major disaster  
18 area; and  
19 (ii) a breakdown of that number by State;
- 20 (K)(i) the daily dollar amount of loans disbursed, both partially  
21 and fully, to applicants in the major disaster area; and  
22 (ii) a breakdown of that number by State;
- 23 (L)(i) the number of applications approved, including dollar  
24 amount approved, and applications partially and fully disbursed,  
25 including dollar amounts, since the last report under paragraph  
26 (1); and
- 27 (M)(i) the declaration date, physical damage closing date, and  
28 economic injury closing date for the major disaster; and  
29 (ii) the number of counties in the major disaster area.
- 30 (d) PERIODS WHEN ADDITIONAL DISASTER ASSISTANCE IS MADE  
31 AVAILABLE.—
- 32 (1) IN GENERAL.—During any period for which the Administrator  
33 declares eligibility for additional disaster assistance under section  
34 221108 of this title, the Administrator shall, on a monthly basis, sub-  
35 mit to the Committee on Small Business and Entrepreneurship of the  
36 Senate and the Committee on Small Business of the House of Rep-  
37 resentatives a report on the disaster assistance operations of the Ad-  
38 ministrator with respect to the applicable major disaster.
- 39 (2) CONTENTS.—A report under paragraph (1) shall specify—
- 40 (A) the number of applications for disaster assistance distrib-  
41 uted;

- 1 (B) the number of applications for disaster assistance received;
- 2 (C) the average time for the Administrator to approve or dis-
- 3 approve an application for disaster assistance;
- 4 (D) the number of disaster loans approved;
- 5 (E) the average time for initial disbursement of disaster loan
- 6 proceeds; and
- 7 (F) the dollar amount of disaster loan proceeds disbursed.

8 (e) NOTICE OF NEED FOR SUPPLEMENTAL FUNDS.—On the date on  
9 which the Administrator notifies any committee of the Senate or the House  
10 of Representatives that supplemental funding is necessary for the disaster  
11 assistance programs in any fiscal year, the Administrator shall notify in  
12 writing the Committee on Small Business and Entrepreneurship of the Sen-  
13 ate and the Committee on Small Business of the House of Representatives  
14 regarding the need for supplemental funds for the disaster assistance pro-  
15 grams.

16 (f) REPORT ON CONTRACTING.—

17 (1) IN GENERAL.—Not later than 6 months after the date on which  
18 the President declares a major disaster, and every 6 months thereafter  
19 until the date that is 18 months after the date on which the major dis-  
20 aster is declared, the Administrator shall submit to the Committee on  
21 Small Business and Entrepreneurship of the Senate and the Committee  
22 on Small Business of the House of Representatives a report regarding  
23 Federal contracts awarded as a result of the major disaster.

24 (2) CONTENTS.—A report under paragraph (1) shall include—

- 25 (A) the number of contracts awarded as a result of the major
- 26 disaster;
- 27 (B) the number of contracts awarded to small business concerns
- 28 as a result of the major disaster;
- 29 (C) the number of contracts awarded to women-owned business
- 30 concerns and minority-owned business concerns as a result of the
- 31 major disaster; and
- 32 (D) the number of contracts awarded to business concerns local
- 33 to the major disaster area as a result of the major disaster.

34 (g) ANNUAL REPORTS ON DISASTER ASSISTANCE.—

35 (1) IN GENERAL.—Not later than 45 days after the end of a fiscal  
36 year, the Administrator shall submit to the Committee on Small Busi-  
37 ness and Entrepreneurship of the Senate and the Committee on Small  
38 Business of the House of Representatives a report on the disaster as-  
39 sistance operations of SBA for the fiscal year.

40 (2) CONTENTS.—A report under paragraph (1) shall—

- 1 (1) specify the number of SBA personnel involved in disaster assist-
- 2 ance operations;
- 3 (2) describe any material changes to disaster assistance operations,
- 4 such as changes to technologies used or to personnel responsibilities;
- 5 (3) describe and assess the effectiveness of the Administrator in re-
- 6 sponding to disasters during the fiscal year, including a description of
- 7 the number and dollar amounts of loans made for damage and for eco-
- 8 nomic injury; and
- 9 (4) describe the plans of the Administrator for preparing to respond
- 10 to disasters during the next fiscal year.

## 11 **Chapter 109—Funding**

Sec.

- 109101. Commitments in full amounts provided by law.
- 109102. Program levels.
- 109103. Authorization of appropriations.
- 109104. TARP funds and tax increases.
- 109105. Annual budget request.

### 12 **§ 109101. Commitments in full amounts provided by law**

13 (a) IN GENERAL.—Notwithstanding any other provision of law, the Ad-

14 ministrator shall enter into commitments for direct loans and to guarantee

15 loans, debentures, payment of rentals, or other amounts due under qualified

16 contracts and other types of financial assistance, and enter into commit-

17 ments to purchase debentures and preferred securities and to guarantee

18 sureties against loss pursuant to programs under subtitles II and III, in the

19 full amounts provided by law subject only to—

- 20 (1) the availability of qualified applications; and
- 21 (2) limitations contained in appropriations Acts.

22 (b) EFFECT OF SECTION.—Nothing in this section authorizes the Admin-

23 istrator to reduce or limit the authority of the Administrator to enter into

24 a commitment described in subsection (a).

25 (c) MULTIPLE FISCAL YEARS.—Subject to approval in appropriations

26 Acts, amounts authorized for preferred securities, debentures, or participat-

27 ing securities under chapter 303 may be obligated in 1 fiscal year and dis-

28 bursed or guaranteed in any 1 or more of the 4 subsequent fiscal years.

### 29 **§ 109102. Program levels**

30 (a) FISCAL YEAR 2005.—The following program levels are authorized for

31 fiscal year 2005:

- 32 (1) For the programs authorized by this subtitle and subtitle II, the
- 33 Administrator may make—

- 34 (A) \$75,000,000 in technical assistance grants, as provided in
- 35 chapter 213; and
- 36 (B) \$105,000,000 in direct loans, as provided in chapter 213.

1           (2) For the programs authorized by this subtitle and subtitle II, the  
2 Administrator may make \$23,050,000,000 in deferred participation  
3 loans and other financings. Of that sum, the Administrator may  
4 make—

5           (A) \$16,500,000,000 in general business loans, as provided in  
6 division B of subtitle II;

7           (B) \$6,000,000,000 in certified development company financ-  
8 ings, as provided in section 205107 of this title and chapter 331;

9           (C) \$500,000,000 in loans, as provided in section 205112 of  
10 this title; and

11           (D) \$50,000,000 in loans, as provided in chapter 213.

12           (3) For the programs authorized by chapter 303, the Administrator  
13 may make—

14           (A) \$4,250,000,000 in purchases of participating securities; and

15           (B) \$3,250,000,000 in guarantees of debentures.

16           (4) For the programs authorized by chapter 321, the Administrator  
17 may enter into guarantees not to exceed \$6,000,000,000, of which not  
18 more than 50 percent may be in bonds approved under section  
19 321102(a)(4) of this title.

20           (5) The Administrator may make grants or enter into cooperative  
21 agreements for a total amount of \$7,000,000 for SCORE.

22           (b) FISCAL YEAR 2006.—The following program levels are authorized for  
23 fiscal year 2006:

24           (1) For the programs authorized by this subtitle and subtitle II, the  
25 Administrator may make—

26           (A) \$80,000,000 in technical assistance grants, as provided in  
27 chapter 213; and

28           (B) \$110,000,000 in direct loans, as provided in chapter 213.

29           (2) For the programs authorized by this subtitle and subtitle II, the  
30 Administrator may make \$25,050,000,000 in deferred participation  
31 loans and other financings. Of that sum, the Administrator may  
32 make—

33           (A) \$17,000,000,000 in general business loans, as provided in  
34 division B of subtitle II;

35           (B) \$7,500,000,000 in certified development company financ-  
36 ings, as provided in section 205107 of this title and chapter 331;

37           (C) \$500,000,000 in loans, as provided in section 205112 of  
38 this title; and

39           (D) \$50,000,000 in loans, as provided in chapter 213.

40           (3) For the programs authorized by chapter 303, the Administrator  
41 may make—

1 (A) \$4,500,000,000 in purchases of participating securities; and

2 (B) \$3,500,000,000 in guarantees of debentures.

3 (4) For the programs authorized by chapter 321, the Administrator  
4 may enter into guarantees not to exceed \$6,000,000,000, of which not  
5 more than 50 percent may be in bonds approved under section  
6 321102(a)(4) of this title.

7 (5) The Administrator may make grants or enter into cooperative  
8 agreements for a total amount of \$7,000,000 for SCORE.

9 (c) AMOUNT OF DEFERRED PARTICIPATION LOANS.—Except as may be  
10 otherwise specifically provided by law, the amount of deferred participation  
11 loans authorized in this section—

12 (1) means the net amount of the loan principal guaranteed by the  
13 Administrator and does not include any amount that is not guaranteed;  
14 and

15 (2) shall be available for a national program, except that the Admin-  
16 istrator may use not more than an amount equal to 10 percent of the  
17 amount authorized each year for any special or pilot program directed  
18 to identified sectors of the small business community or to specific geo-  
19 graphic regions of the United States.

20 **§ 109103. Authorization of appropriations**

21 (a) CERTAIN ADMINISTRATIVE EXPENSES.—For each fiscal year, there  
22 are authorized to be appropriated such sums as are necessary, to remain  
23 available until expended—

24 (1) to carry out the small business development center program, but  
25 not to exceed the annual funding level specified in section 271102 of  
26 this title;

27 (2) to pay the expenses of the National Small Business Development  
28 Center Advisory Board under section 271109 of this title;

29 (3) to pay the expenses of the information sharing system under sec-  
30 tion 271104(j) of this title;

31 (4) to pay the expenses of the Association for conducting the accredi-  
32 tation program under section 271111 of this title;

33 (5) to pay SBA's expenses, including salaries of examiners, for con-  
34 ducting examinations as part of the accreditation program conducted  
35 by the Association; and

36 (6) to pay for small business development center grants as directed  
37 by Congress.

38 (b) PROGRAMS FOR WHICH PROGRAM LEVELS ARE ESTABLISHED  
39 UNDER SECTION 109102.—

1 (1) IN GENERAL.—There are authorized to be appropriated to SBA  
2 for each of fiscal years 2005 and 2006 such sums as are necessary to  
3 carry out—

4 (A) the provisions of this subtitle and subtitle II not elsewhere  
5 provided for (including salaries and expenses of SBA and nec-  
6 essary loan capital for loans under the disaster loan program); and

7 (B) subtitle III.

8 (2) LIMITATIONS.—Notwithstanding any other provision of this sub-  
9 section, for each of fiscal years 2005 and 2006, respectively—

10 (A) no funds are authorized to be used as loan capital for the  
11 loan program authorized by section 205112 of this title except by  
12 transfer from another Federal agency to SBA, unless the program  
13 level authorized for general business loans under subsection  
14 (a)(2)(A) or (b)(2)(A) of section 109102 of this title is fully fund-  
15 ed; and

16 (B) the Administrator may not approve loans on behalf of SBA  
17 or on behalf of any other Federal agency, by contract or otherwise,  
18 under terms or conditions other than those specifically authorized  
19 under this subtitle or subtitle II or III, except that the Adminis-  
20 trator may approve loans under section 205112 of this title in  
21 gross amounts of not more than \$2,000,000.

22 (c) OFFICE OF ADVOCACY.—

23 (1) APPROPRIATION REQUESTS.—Each budget of the United States  
24 Government submitted by the President under section 1105 of title 31  
25 shall include a separate statement of the amount of appropriations re-  
26 quested for the Office of Advocacy of SBA, which shall be designated  
27 in a separate account in the general fund of the Treasury.

28 (2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to  
29 be appropriated such sums as are necessary to carry out section  
30 103.107 of this title. Any amount appropriated under this paragraph  
31 shall remain available, without fiscal year limitation, until expended.

32 (d) OFFICE OF VETERANS BUSINESS DEVELOPMENT.—There are author-  
33 ized to be appropriated to carry out section 103113 of this title—

34 (1) \$1,500,000 for fiscal year 2005; and

35 (2) \$2,000,000 for fiscal year 2006.

36 (e) LOSSES AND INTEREST SUBSIDIES.—There are authorized to be ap-  
37 propriated for each fiscal year such sums as are necessary for losses and  
38 interest subsidies incurred by the accounts referred to in section  
39 103202(a)(1) of this title.



1 (f) HUBZONE PROGRAM.—There is authorized to be appropriated to  
2 carry out chapter 253 \$10,000,000 for each of fiscal years 2004 through  
3 2006.

4 (g) FAST PROGRAM.—

5 (1) IN GENERAL.—There is authorized to be appropriated to carry  
6 out the FAST program (including mentoring networks) under section  
7 263305 of this title \$10,000,000 for each of fiscal years 2001 through  
8 2005.

9 (2) MENTORING DATABASE.—Of the total amount made available  
10 under paragraph (1) for fiscal years 2001 through 2005, a reasonable  
11 amount, not to exceed a total of \$500,000, may be used by the Admin-  
12 istrator to carry out section 263305(f)(3) of this title.

13 (h) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.—

14 (1) IN GENERAL.—There are authorized to be appropriated to carry  
15 out chapter 271—

16 (A) \$130,000,000 for fiscal year 2005; and

17 (B) \$135,000,000 for fiscal year 2006.

18 (2) GRANTS.—There is authorized to be appropriated \$50,000,000  
19 to carry out section 271115 of this title.

20 (i) NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION.—

21 (1) IN GENERAL.—Subject to paragraph (2), there are authorized to  
22 be appropriated to the National Veterans Business Development Cor-  
23 poration to carry out section 275114 of this title—

24 (A) \$4,000,000 for fiscal year 2001;

25 (B) \$4,000,000 for fiscal year 2002;

26 (C) \$2,000,000 for fiscal year 2003; and

27 (D) \$2,000,000 for fiscal year 2004.

28 (2) MATCHING REQUIREMENT.—

29 (A) FISCAL YEAR 2002.—The amount made available to the Na-  
30 tional Veterans Business Development Corporation for fiscal year  
31 2002 may not exceed twice the amount that the Corporation cer-  
32 tifies that it will provide for that fiscal year from sources other  
33 than the Federal Government.

34 (B) SUBSEQUENT FISCAL YEARS.—The amount made available  
35 to the National Veterans Business Development Corporation for  
36 fiscal year 2003 or 2004 may not exceed the amount that the Cor-  
37 poration certifies that it will provide for that fiscal year from  
38 sources other than the Federal Government.

39 (3) PRIVATIZATION.—The National Veterans Business Development  
40 Corporation shall institute and implement a plan to raise private funds  
41 and become a self-sustaining corporation.

(j) BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.—There is authorized to be appropriated to carry out section 291102 of this title \$6,600,000 for each of fiscal years 2001 through 2006, to remain available until expended.

(k) PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out section 291104 of this title (other than section 291104(b)(2) of this title) \$5,000,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph shall remain available until expended.

(2) SMALL BUSINESS DEVELOPMENT CENTERS.—Of the total amount made available under paragraph (1) for each of fiscal years 2005 and 2006, not more than the greater of 10 percent or \$500,000 may be used to carry out section 271104(b)(20) of this title.

(3) ADDITIONAL AUTHORIZATION FOR TECHNICAL ASSISTANCE GRANTS.—There are authorized to be appropriated to carry out section 291104(b)(2) of this title \$1,500,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph shall remain available until expended.

(4) LIMITATION ON ADMINISTRATIVE COSTS.—Not more than 5 percent of the total amount made available under this subsection for any fiscal year shall be used for administrative costs (determined without regard to the administrative costs of eligible intermediaries).

(l) NEW MARKETS VENTURE CAPITAL COMPANY PROGRAM.—

(1) IN GENERAL.—There are authorized to be appropriated for fiscal years 2001 through 2006, to remain available until expended, the following sums:

(A) Such subsidy budget authority as is necessary to guarantee \$150,000,000 of debentures under chapter 305.

(B) \$30,000,000 to make grants under chapter 305.

(2) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited under section 305112(d) of this title are authorized to be appropriated only for the costs of examinations under section 305112 of this title and for the costs of other oversight activities with respect to the new markets venture capital company program.

(m) RENEWABLE FUEL CAPITAL INVESTMENT COMPANY PROGRAM.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Administrator may make \$15,000,000 in operational assistance grants under section 307107 of this title for each of fiscal years 2008 and 2009.

1           (2) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited  
2           under section 307111(d) of this title are authorized to be appropriated  
3           only for the costs of examinations under section 307111 of this title  
4           and for the costs of other oversight activities with respect to the renew-  
5           able fuel capital investment company program.

6   **§ 109104. TARP funds and tax increases**

7           (a) DEFINITION OF COVERED AMOUNT.—In this section, the term “cov-  
8           ered amount” means—

9           (1) an amount made available to the Secretary of the Treasury  
10          under title I of the Emergency Economic Stabilization Act of 2008 (12  
11          U.S.C. 5211 et seq.) to purchase (under section 101 of that Act (12  
12          U.S.C. 5211)) or guarantee (under section 102 of that Act (12 U.S.C.  
13          5212)) assets under that Act; and

14          (2) a revenue increase attributable to any amendment to the Internal  
15          Revenue Code of 1986 made during the period beginning on September  
16          27, 2010, and ending on December 31, 2010.

17          (b) PROHIBITION.—No covered amount shall be used to carry out the  
18          provisions described in subsection (c) (as restated in this title, in the case  
19          of the provisions described in paragraphs (1) to (3), (5) to (7), and (9) to  
20          (13)).

21          (c) PROVISIONS.—The provisions referred to in subsection (b) are—

22               (1) the amendments made by section 1111 of the Small Business  
23               Job Creation and Access to Capital Act of 2010 (124 Stat. 2507);

24               (2) the amendments made by section 1112 of the Small Business  
25               Job Creation and Access to Capital Act of 2010 (124 Stat. 2508);

26               (3) the amendments made by section 1113 of the Small Business  
27               Job Creation and Access to Capital Act of 2010 (124 Stat. 2508);

28               (4) the amendments made by section 1114 of the Small Business  
29               Job Creation and Access to Capital Act of 2010 (124 Stat. 2508);

30               (5) the amendment made by section 1115 of the Small Business Job  
31               Creation and Access to Capital Act of 2010 (124 Stat. 2508);

32               (6) the amendment made by section 1116 of the Small Business Job  
33               Creation and Access to Capital Act of 2010 (124 Stat. 2509);

34               (7) the amendment made by section 1117 of the Small Business Job  
35               Creation and Access to Capital Act of 2010 (124 Stat. 2509);

36               (8) section 1118 of the Small Business Job Creation and Access to  
37               Capital Act of 2010 (124 Stat. 2509);

38               (9) the amendment made by section 1122(a) of the Small Business  
39               Job Creation and Access to Capital Act of 2010 (124 Stat. 2510);

40               (10) section 1122(b) of the Small Business Job Creation and Access  
41               to Capital Act of 2010 (124 Stat. 2512);

- 1 (11) the amendment made by section 1122(c) of the Small Business  
 2 Job Creation and Access to Capital Act of 2010 (124 Stat. 2512);  
 3 (12) the amendment made by section 1131(a) of the Small Business  
 4 Job Creation and Access to Capital Act of 2010 (124 Stat. 2512); and  
 5 (13) subsections (b) and (c) of section 1131 of the Small Business  
 6 Job Creation and Access to Capital Act of 2010 (124 Stat. 2514).

7 **§ 109105. Annual budget request**

8 (a) IN GENERAL.—For each fiscal year, the budget request for SBA shall  
 9 provide a detailed justification of any proposed changes from the enacted  
 10 level by individual appropriation.

11 (b) CONTENTS.—The detailed justification shall include at a minimum a  
 12 description of each credit program and noncredit program, including the  
 13 amount of funding and the amount of costs by appropriation account and  
 14 fiscal year.

15 (c) MULTIPLE APPROPRIATIONS.—For activities funded in multiple ap-  
 16 propriations, the budget justification shall—

- 17 (1) specify the amount included in each enacted appropriation;  
 18 (2) specify the amount proposed for the budget year; and  
 19 (3) provide a justification for any proposed changes.

20 **Subtitle II—Loan, Contracting, and**  
 21 **Related Assistance Programs**  
 22 **Division A—General Provisions**  
 23 **Chapter 201—General Provisions**

Sec.

201101. Certification of compliance with child support obligations.  
 201102. Authorities in carrying out programs for small business concerns in areas with high  
 proportions of unemployed or low-income individuals and small business concerns  
 owned by low-income individuals.  
 201103. Extension or renewal of loans.  
 201104. Deferral of repayment for active duty reservists.  
 201105. Ownership interest arising from community property law.  
 201106. Use of financial assistance programs.

24 **§ 201101. Certification of compliance with child support ob-**  
 25 **ligations**

26 (a) IN GENERAL.—A recipient of financial assistance under this subtitle  
 27 shall certify that the recipient is not more than 60 days delinquent under  
 28 the terms of any—

- 29 (1) administrative order;  
 30 (2) court order; or  
 31 (3) repayment agreement entered into between the recipient and the  
 32 custodial parent or State agency providing child support enforcement  
 33 services;  
 34 that requires the recipient to pay child support (as defined in section 459(i)  
 35 of the Social Security Act (42 U.S.C. 659(i))).

(b) ENFORCEMENT.—The Administrator shall promulgate such regulations as are necessary to enforce compliance with this section.

**§ 201102. Authorities in carrying out programs for small business concerns in areas with high proportions of unemployed or low-income individuals and small business concerns owned by low-income individuals**

In carrying out section 205104 of this title and the business development program, the Administrator may—

(1) use, with their consent, the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or political subdivision of a State, accept and use the services and facilities of the State or subdivision without reimbursement;

(2) accept, in the name of SBA, and employ or dispose of in furtherance of the purposes of this subtitle, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise;

(3) accept voluntary and uncompensated services, notwithstanding section 1342 of title 31; and

(4)(A) employ experts and consultants or organizations of experts and consultants as authorized by section 3109 of title 5, except that no individual may be employed under this subsection for more than 100 days in any fiscal year;

(B) compensate individuals employed under subparagraph (A) at rates not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, including travel time;

(C) allow individuals employed under subparagraph (A), while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for persons in the Government service employed intermittently, while so employed; and

(D) notwithstanding section 3109(b) of title 5, renew contracts for employment under subparagraph (A) annually.

**§ 201103. Extension or renewal of loans**

(a) IN GENERAL.—The Administrator may extend the maturity of or renew a loan under the general business loan program, disaster loan program, private disaster loan program, intermediary lending pilot program, or microloan program for additional periods not to exceed 10 years beyond the period stated in the loan if the extension or renewal will aid in the orderly liquidation of the loan.

(b) INAPPLICABILITY TO CERTAIN DISASTER LOANS.—Subsection (a) does not apply to a loan under the disaster loan program that has a term of more than 20 years.

**§ 201104. Deferral of repayment for active duty reservists**

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE RESERVIST.—The term “eligible reservist” means a member of a reserve component of the Armed Forces ordered to active duty during a period of military conflict.

(2) ESSENTIAL EMPLOYEE.—The term “essential employee” means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of the small business concern.

(3) PERIOD OF MILITARY CONFLICT.—The term “period of military conflict” means—

(A) a period of war declared by Congress;

(B) a period of national emergency declared by Congress or by the President; or

(C) a period of a contingency operation (as defined in section 101(a) of title 10).

(4) QUALIFIED BORROWER.—The term “qualified borrower” means—

(A) an individual who is an eligible reservist and who received a direct loan under the general business loan program or a disaster assistance program before being ordered to active duty; or

(B) a small business concern that received a direct loan under the general business loan program or a disaster assistance program before an eligible reservist, who is an essential employee, was ordered to active duty.

(b) DEFERRAL OF DIRECT LOANS.—

(1) IN GENERAL.—The Administrator shall, on written request, defer repayment of principal and interest due on a direct loan made under the general business loan program or a disaster assistance program if the loan was incurred by a qualified borrower.

(2) PERIOD OF DEFERRAL.—The period of deferral for repayment under paragraph (1) shall begin on the date on which the eligible reservist is ordered to active duty and terminate on the date that is 180 days after the date on which the eligible reservist is discharged or released from active duty.

(3) INTEREST RATE REDUCTION DURING DEFERRAL.—Notwithstanding any other provision of law, during the period of deferral under

1 paragraph (2), the Administrator may reduce the interest rate on a  
2 loan qualifying for a deferral under this subsection.

3 (c) DEFERRAL OF LOAN GUARANTEES AND OTHER FINANCINGS.—The  
4 Administrator shall—

5 (1) encourage intermediaries participating in the microloan program  
6 to defer repayment of a microloan made with proceeds made available  
7 under the microloan program, if the microloan was incurred by a small  
8 business concern that is eligible to apply for assistance under section  
9 221103 of this title; and

10 (2) establish guidelines to—

11 (A) encourage lenders and other intermediaries to defer repay-  
12 ment of, or provide other relief relating to—

13 (i) loan guarantees under the general business loan pro-  
14 gram and financings under the certified development company  
15 program that were incurred by small business concerns that  
16 are eligible to apply for assistance under section 221103 of  
17 this title; and

18 (ii) loan guarantees provided under the microloan program  
19 if the intermediary provides relief to a small business concern  
20 under this subsection; and

21 (B) implement a program to provide for the deferral of repay-  
22 ment or other relief to any intermediary providing relief to a small  
23 business borrower under this subsection.

24 **§ 201105. Ownership interest arising from community prop-**  
25 **erty law**

26 Ownership requirements to determine the eligibility of a small business  
27 concern that applies for assistance under any credit program under this  
28 subtitle shall be determined without regard to any ownership interest of a  
29 spouse arising solely from the application of the community property law  
30 of a State for purposes of determining marital interests.

31 **§ 201106. Use of financial assistance programs**

32 The financial assistance programs authorized by this subtitle and subtitle  
33 I shall be used to assist small business concerns that are engaged in—

- 34 (1) the production of food or fiber;  
35 (2) ranching;  
36 (3) livestock raising;  
37 (4) aquaculture; or  
38 (5) any other industry relating to agriculture.

1           **Division B—General Business Loan**  
2                           **Program**  
3           **Chapter 203—General Purpose Loans**

Sec.

- 203101. Loan authority.
- 203102. Methods of participation.
- 203103. No credit elsewhere.
- 203104. Sound and secure requirement.
- 203105. Level of participation in guaranteed loans.
- 203106. Maximum loan amounts.
- 203107. Interest rates.
- 203108. Prepayment charges.
- 203109. Maximum term.
- 203110. Deferment of payments.
- 203111. Guarantee fees.
- 203112. Certified lenders program.
- 203113. Penalty fee on late payment.
- 203114. Yearly fee.
- 203115. Notification to Congress of significant policy or administrative changes.
- 203116. Pilot programs.
- 203117. Calculation of subsidy rate.
- 203118. Leasing.
- 203119. Real estate appraisals.
- 203120. Express loan program.
- 203121. Loan application preparation and loan servicing by qualified development companies.
- 203122. Increased veteran/reservist participation program.

4           **§ 203101. Loan authority**

5           To the extent and in such amounts as are provided in advance in appro-  
6           priation Acts, the Administrator may make loans to small business concerns  
7           (including a small business concern owned by a qualified Indian tribe) for  
8           plant acquisition, construction, conversion, or expansion, including the ac-  
9           quisition of land, material, supplies, equipment, and working capital.

10          **§ 203102. Methods of participation**

11          The Administrator may make a loan under section 203101 of this title—

12               (1) directly; or

13               (2) in cooperation with a bank or other lending institution or any  
14           other entity through an agreement to participate on an immediate or  
15           deferred (guaranteed) basis.

16          **§ 203103. No credit elsewhere**

17           (a) IN GENERAL.—No financial assistance shall be extended under the  
18           general business loan program if the applicant can obtain credit elsewhere.

19           (b) IMMEDIATE PARTICIPATION.—No immediate participation may be  
20           purchased unless it is shown that a deferred participation is not available.

21           (c) DIRECT FINANCING.—No direct financing may be made unless it is  
22           shown that a participation is not available.

23          **§ 203104. Sound and secure requirement**

24           (a) IN GENERAL.—A loan made under the general business loan program  
25           shall be of such sound value or so secured as reasonably to ensure repay-  
26           ment.



1 (b) REASONABLE DOUBT.—In applying subsection (a) in the case of a  
2 loan to assist a public or private organization for the disabled or to assist  
3 a disabled individual as provided in section 205103 of this title, any reason-  
4 able doubt shall be resolved in favor of the applicant.

5 (c) ENERGY MEASURES.—Recognizing that greater risk may be associ-  
6 ated with a loan for an energy measure as provided in section 205105 of  
7 this title, in applying subsection (a) in the case of such a loan—

8 (1) factors in determining sound value shall include—

9 (A) quality of the product or service;

10 (B) technical qualifications of the applicant or employees of the  
11 applicant;

12 (C) sales projections; and

13 (D) the financial status of the applicant; and

14 (2) the loan need not be as sound as is generally required for a loan  
15 under the general business loan program.

16 (d) NO DELEGATION OF AUTHORITY.—The authority conferred by this  
17 section shall be exercised solely by SBA personnel and shall not be delegated  
18 to other than SBA personnel.

19 **§ 203105. Level of participation in guaranteed loans**

20 (a) IN GENERAL.—Except as provided in subsections (b), (c), and (d),  
21 in an agreement to participate in a loan on a deferred basis under the gen-  
22 eral business loan program (including a loan made under the preferred lend-  
23 ers program), participation by the Administrator shall be equal to 75 per-  
24 cent of the balance of the financing outstanding at the time of disbursement  
25 of the loan.

26 (b) REDUCED PARTICIPATION ON REQUEST.—

27 (1) IN GENERAL.—The guarantee percentage specified by subsection  
28 (a) for a loan under the general business loan program may be reduced  
29 on the request of the participating lender.

30 (2) PROHIBITION.—The Administrator shall not use the guarantee  
31 percentage requested by a participating lender under paragraph (1) as  
32 a criterion for establishing priorities in approving loan guarantee re-  
33 quests under the general business loan program.

34 (c) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—Not-  
35 withstanding subsection (a), under an agreement to participate in a loan on  
36 a deferred basis under the export working capital program, participation by  
37 the Administrator shall be 90 percent.

38 (d) PARTICIPATION IN INTERNATIONAL TRADE LOAN.—In an agreement  
39 to participate in a loan on a deferred basis under section 205110 of this  
40 title, the participation by the Administrator shall not exceed 90 percent.

1 (e) REFINANCING OF INDEBTEDNESS.—On any portion of a loan used to  
2 refinance indebtedness held by a bank or other lending institution, the Ad-  
3 ministrator shall limit the amount of deferred participation to 80 percent  
4 of the amount of the loan at the time of disbursement.

5 **§ 203106. Maximum loan amounts**

6 (a) IN GENERAL.—Except as provided in subsection (b) and subject to  
7 subsection (c), no loan shall be made to a borrower under the general busi-  
8 ness loan program if the total amount outstanding and committed (on a de-  
9 ferred basis, through a participation on an immediate basis, or directly) to  
10 the borrower under the general business loan program would exceed  
11 \$3,750,000 (or if the gross loan amount would exceed \$5,000,000).

12 (b) SMALL BUSINESS CONCERN IN INDUSTRY ENGAGED IN OR AD-  
13 VERSELY AFFECTED BY INTERNATIONAL TRADE.—A loan solely for the  
14 purposes provided in section 205110 of this title may be made under the  
15 general business loan program and microloan program if the total amount  
16 outstanding and committed (on a deferred basis) to the borrower under the  
17 general business loan program would not exceed \$4,500,000 (or if the gross  
18 loan amount would exceed \$5,000,000), of which not more than \$4,000,000  
19 may be used for working capital, supplies, or financings under section  
20 205108 of this title for export purposes.

21 (c) DIRECT LOANS; PARTICIPATION ON AN IMMEDIATE BASIS.—No loan  
22 shall be made under the general business loan program, either directly or  
23 in cooperation with banks or other lending institutions through agreements  
24 to participate on an immediate basis, if the amount would exceed \$350,000.

25 **§ 203107. Interest rates**

26 (a) MAXIMUM RATE PRESCRIBED BY THE ADMINISTRATOR.—Notwith-  
27 standing the provisions of the constitution of any State or the laws of any  
28 State limiting the rate or amount of interest that may be charged, taken,  
29 received, or reserved, the maximum legal rate of interest on a financing  
30 made on a deferred basis under the general business loan program shall not  
31 exceed a rate prescribed by the Administrator.

32 (b) DIRECT LOANS AND IMMEDIATE PARTICIPATION LOANS.—The rate  
33 of interest for the Administrator's share of any direct loan or immediate  
34 participation loan under the general business loan program shall not exceed  
35 the current average market yield on outstanding marketable obligations of  
36 the United States with remaining periods to maturity comparable to the av-  
37 erage maturities of such loans and adjusted to the nearest 0.125 percent,  
38 and an additional amount as determined by the Administrator, but not to  
39 exceed 1 percent per year.

40 (c) PREFERRED LENDERS PROGRAM.—The maximum interest rate for a  
41 loan under the general business loan program that is guaranteed under the

1 preferred lenders program shall not exceed the maximum interest rate, as  
2 determined by the Administrator, applicable to other loans guaranteed  
3 under the general business loan program.

4 (d) LOANS TO ASSIST THE DISABLED.—In the case of a loan under the  
5 general business loan program to assist a public or private organization for  
6 the disabled or to assist a disabled individual as provided in section 205103  
7 of this title, the interest rate shall be 3 percent per year.

8 (e) PAYMENT OF ACCRUED INTEREST.—

9 (1) IN GENERAL.—A bank or other lending institution making a  
10 claim for payment on the guaranteed portion of a loan made under the  
11 general business loan program shall be paid the accrued interest due  
12 on the loan from the earliest date of default to the date of payment  
13 of the claim at a rate not to exceed the rate of interest on the loan  
14 on the date of default, minus 1 percent.

15 (2) LOANS SOLD ON SECONDARY MARKET.—If a loan described in  
16 paragraph (1) is sold on the secondary market, the amount of interest  
17 paid to a bank or other lending institution described in that paragraph  
18 from the earliest date of default to the date of payment of the claim  
19 shall be no more than the agreed upon rate, minus 1 percent.

20 (3) APPLICABILITY.—Paragraphs (1) and (2) do not apply to loans  
21 made on or after October 1, 2000.

## 22 **§ 203108. Prepayment charges**

23 (a) IN GENERAL.—A borrower that prepays a loan guaranteed under the  
24 general business loan program shall remit to the Administrator a subsidy  
25 recoupment fee calculated in accordance with subsection (b) if—

26 (1) the loan is for a term of not less than 15 years;

27 (2) the prepayment is voluntary;

28 (3) the amount of prepayment in any calendar year is more than 25  
29 percent of the outstanding balance of the loan; and

30 (4) the prepayment is made within the 1st 3 years after disburse-  
31 ment of the loan proceeds.

32 (b) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged  
33 under subsection (a) shall be—

34 (1) 5 percent of the amount of prepayment, if the borrower prepays  
35 during the 1st year after disbursement;

36 (2) 3 percent of the amount of prepayment, if the borrower prepays  
37 during the 2d year after disbursement; and

38 (3) 1 percent of the amount of prepayment, if the borrower prepays  
39 during the 3d year after disbursement.

1    **§ 203109. Maximum term**

2       (a) IN GENERAL.—Except as provided in subsection (b), no loan (includ-  
3    ing a loan renewal or extension) shall be made under the general business  
4    loan program for a term or terms exceeding 25 years.

5       (b) EXCEPTION.—Any portion of a loan that is made under the general  
6    business loan program for the purpose of acquiring real property or con-  
7    structing, converting, or expanding a facility may have a term of 25 years  
8    plus such additional period as is estimated may be required to complete the  
9    construction, conversion, or expansion.

10   **§ 203110. Deferment of payments**

11       The Administrator may defer payments on the principal of a loan under  
12    the general business loan program for a grace period, and use such other  
13    methods as the Administrator considers necessary and appropriate, to en-  
14    sure the successful establishment and operation of a small business concern.

15   **§ 203111. Guarantee fees**

16       (a) IN GENERAL.—With respect to a loan guaranteed under the general  
17    business loan program (other than a loan that is repayable in 1 year or  
18    less), the Administrator shall collect a guarantee fee, which shall be payable  
19    by the participating lender, and may be charged to the borrower, as follows:

20           (1) A guarantee fee of not to exceed 2 percent of the deferred par-  
21           ticipation share of a total loan amount that is not more than \$150,000.

22           (2) A guarantee fee of not to exceed 3 percent of the deferred par-  
23           ticipation share of a total loan amount that is more than \$150,000,  
24           but not more than \$700,000.

25           (3) A guarantee fee of not to exceed 3.5 percent of the deferred par-  
26           ticipation share of a total loan amount that is more than \$700,000.

27           (4) In addition to the guarantee fee under paragraph (3), a guaran-  
28           tee fee equal to 0.25 percent of any portion of the deferred participa-  
29           tion share that is more than \$1,000,000.

30       (b) RETENTION OF CERTAIN FEES.—A lender participating in the gen-  
31    eral business loan program may retain not more than 25 percent of a fee  
32    collected under subsection (a)(1).

33   **§ 203112. Certified lenders program**

34       (a) IN GENERAL.—The Administrator may establish a certified lenders  
35    program for lenders that establish their knowledge of the laws (including  
36    regulations) concerning the guaranteed loan program and their proficiency  
37    in program requirements.

38       (b) SUSPENSION OR REVOCATION.—The designation of a lender as a cer-  
39    tified lender shall be suspended or revoked at any time that the Adminis-  
40    trator determines that the lender is not adhering to regulations prescribed  
41    by the Administrator or that the loss experience of the lender is excessive

1 as compared with that of other lenders, but the suspension or revocation  
2 shall not affect any outstanding guarantee.

3 (c) UNIFORM AND SIMPLIFIED LOAN FORM.—To encourage all lending  
4 institutions and other entities making loans under the general business loan  
5 program to provide loans of \$50,000 or less in guarantees to eligible small  
6 business loan applicants, the Administrator shall develop, and allow partici-  
7 pating lenders to solely use, a uniform and simplified loan form for such  
8 loans.

9 (d) LOAN LIQUIDATION.—

10 (1) IN GENERAL.—The Administrator may permit a lender partici-  
11 pating in the certified lenders program to liquidate a loan made with  
12 a guarantee from the Administrator in accordance with a liquidation  
13 plan approved by the Administrator.

14 (2) AUTOMATIC APPROVAL.—If the Administrator does not approve  
15 or deny a request for approval of a liquidation plan within 10 business  
16 days after the date on which the request is made (or with respect to  
17 any routine liquidation activity under such a plan, within 5 business  
18 days), the request shall be deemed to be approved.

19 **§ 203113. Penalty fee on late payment**

20 The Administrator may permit a participating lender to impose and col-  
21 lect a reasonable penalty fee on late payment of a loan guaranteed under  
22 the general business loan program in an amount not to exceed 5 percent  
23 of the monthly loan payment per month plus interest.

24 **§ 203114. Yearly fee**

25 (a) DEFINITION OF COST.—In this section, the term “cost” has the  
26 meaning given the term in section 502 of the Federal Credit Reform Act  
27 of 1990 (2 U.S.C. 661a).

28 (b) FEE.—With respect to a loan approved under the general business  
29 loan program, the Administrator shall assess, collect, and retain a fee, not  
30 to exceed 0.55 percent per year of the outstanding balance of the deferred  
31 participation share of the loan, in an amount established once annually by  
32 the Administrator in the Administrator’s annual budget request to Con-  
33 gress, as necessary to reduce to zero the cost to the Administrator of mak-  
34 ing guarantees under the general business loan program.

35 (c) PAYER.—The yearly fee assessed under subsection (b) shall be pay-  
36 able by the participating lender and shall not be charged to the borrower.

37 (d) LOWERING OF BORROWER FEES.—If the Administrator determines  
38 that fees paid by lenders and by small business borrowers for guarantees  
39 under the general business loan program may be reduced, consistent with  
40 reducing to zero the cost to the Administrator of making such guarantees—

1 (1) the Administrator shall first consider reducing fees paid by small  
2 business borrowers under paragraphs (1) to (3) of section 203111(a)  
3 of this title, to the maximum extent possible; and

4 (2) fees paid by small business borrowers shall not be increased  
5 above the levels in effect on December 8, 2004.

6 **§ 203115. Notification to Congress of significant policy or**  
7 **administrative changes**

8 Not later than 15 days before making any significant policy or adminis-  
9 trative change affecting the operation of the general business loan program,  
10 the Administrator shall notify the Committee on Small Business and Entre-  
11 preneurship of the Senate and the Committee on Small Business of the  
12 House of Representatives of the change.

13 **§ 203116. Pilot programs**

14 (a) DEFINITION OF PILOT PROGRAM.—In this section, the term “pilot  
15 program” means a lending program initiative, project, innovation, or other  
16 activity not specifically authorized by law.

17 (b) LIMITATION.—Not more than 10 percent of the number of loans  
18 guaranteed in any fiscal year under the general business loan program may  
19 be awarded as part of a pilot program commenced on or after October 1,  
20 1996.

21 (c) LOW DOCUMENTATION LOAN PROGRAM.—

22 (1) IN GENERAL.—The Administrator may carry out the low docu-  
23 mentation loan program for loans of \$100,000 or less only through  
24 lenders with significant experience in making small business loans.

25 (2) REGULATIONS.—The Administrator shall promulgate regulations  
26 defining the experience necessary for participation as a lender in the  
27 low documentation loan program.

28 **§ 203117. Calculation of subsidy rate**

29 All fees, interest, and profits received and retained by the Administrator  
30 under the general business loan program shall be included in the calcula-  
31 tions made by the Director of the Office of Management and Budget to off-  
32 set the cost (as defined in section 502 of the Federal Credit Reform Act  
33 of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and guaran-  
34 teeing loans under this subtitle.

35 **§ 203118. Leasing**

36 In addition to such other lease arrangements as the Administrator may  
37 authorize, a borrower may permanently lease to 1 or more tenants not more  
38 than 20 percent of any property constructed with the proceeds of a loan  
39 guaranteed under the general business loan program if the borrower perma-  
40 nently occupies and uses not less than 60 percent of the total business space  
41 in the property.

1   **§ 203119. Real estate appraisals**

2       With respect to a loan under the general business loan program that is  
3       secured by commercial real property, an appraisal of the property by a State  
4       licensed or certified appraiser—

5           (1) shall be required by the Administrator in connection with any  
6           such loan for more than \$250,000; or

7           (2) may be required by the Administrator or the lender in connection  
8           with any such loan for \$250,000 or less, if an appraisal is necessary  
9           for appropriate evaluation of creditworthiness.

10   **§ 203120. Express loan program**

11       (a) RESTRICTION TO EXPRESS LENDER.—The authority to make an ex-  
12       press loan shall be limited to lenders that the Administrator considers quali-  
13       fied to make express loans.

14       (b) EFFECT OF DESIGNATION.—Designation as an express lender for  
15       purposes of making an express loan does not preclude the lender from tak-  
16       ing any other action authorized by the Administrator for that lender under  
17       the general business loan program.

18       (c) RETENTION OF DESIGNATION OF EXPRESS LENDER.—An express  
19       lender shall retain that designation unless—

20           (1) the Administrator determines that the express lender has violated  
21           the law (including regulations); or

22           (2) the Administrator modifies the requirements to be an express  
23           lender and the lender no longer satisfies those requirements.

24       (d) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the  
25       express loan program is \$350,000.

26       (e) OPTION TO PARTICIPATE.—Except as otherwise provided in this sec-  
27       tion, the Administrator shall take no regulatory, policy, or administrative  
28       action, without regard to whether the action requires notification under sec-  
29       tion 203115 of this title, that has the effect of requiring a lender to make  
30       an express loan.

31       (f) RENEWABLE ENERGY AND ENERGY EFFICIENCY.—The Administrator  
32       may make a loan under the express loan program for the purpose of—

33           (1) purchasing a renewable energy system; or

34           (2) carrying out an energy efficiency project for a small business  
35           concern.

36   **§ 203121. Loan application preparation and loan servicing**  
37       **by qualified development companies**

38       Notwithstanding any other provision of law, a qualified development com-  
39       pany (as defined in section 331101 of this title) may—

40           (1) prepare applications for deferred participation loans under the  
41           general business loan program; and

1 (2) service loans under the general business loan program and  
2 charge a reasonable fee for servicing the loans.

3 **§ 203122. Increased veteran/reservist participation program**

4 (a) DEFINITIONS.—In this section:

5 (1) COST.—The term “cost” has the meaning given the term in sec-  
6 tion 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

7 (2) PILOT PROGRAM.—The term “pilot program” means the pilot  
8 program established under subsection (b).

9 (3) VETERAN/RESERVIST PARTICIPATION LOAN.—The term “veteran/  
10 reservist participation loan” means a loan made under the general busi-  
11 ness loan program to a small business concern owned and controlled  
12 by veterans or by reservists.

13 (b) ESTABLISHMENT.—The Administrator shall establish and carry out a  
14 pilot program under which the Administrator shall reduce the fees for vet-  
15 eran/reservist participation loans.

16 (c) DURATION.—The pilot program shall terminate at the end of the 2d  
17 full fiscal year after the date on which the Administrator establishes the  
18 pilot program.

19 (d) MAXIMUM PARTICIPATION.—A veteran/reservist participation loan  
20 shall include the maximum participation levels by the Administrator per-  
21 mitted for loans made under the general business loan program.

22 (e) FEES.—

23 (1) IN GENERAL.—The fee on a veteran/reservist participation loan  
24 shall be equal to 50 percent of the fee otherwise applicable to that loan  
25 under section 203111 of this title.

26 (2) WAIVER.—The Administrator may waive paragraph (1) for a fis-  
27 cal year if—

28 (A) for the fiscal year before that fiscal year, the annual esti-  
29 mated rate of default of veteran/reservist participation loans ex-  
30 ceeds that of loans made under the general business loan program  
31 that are not veteran/reservist participation loans;

32 (B) the cost to the Administrator of making loans under the  
33 general business loan program is greater than zero and the cost  
34 is directly attributable to the cost of making veteran/reservist par-  
35 ticipation loans; and

36 (C) no additional source of revenue authority is available to re-  
37 duce the cost of making loans under the general business loan pro-  
38 gram to zero.

39 (3) EFFECT OF WAIVER.—If the Administrator waives the reduction  
40 of fees under paragraph (2), the Administrator—



1 (A) shall not assess or collect fees in an amount greater than  
 2 necessary to ensure that the cost of the general business loan pro-  
 3 gram is not greater than zero; and

4 (B) shall reinstate the fee reductions under paragraph (1) when  
 5 the conditions in paragraph (2) no longer apply.

6 (4) NO INCREASE OF FEES.—The Administrator shall not increase  
 7 the fees under 203111 of this title on loans made under the general  
 8 business loan program that are not veteran/reservist participation loans  
 9 as a direct result of the pilot program.

10 (f) GAO REPORT.—

11 (1) IN GENERAL.—Not later than 1 year after the date on which the  
 12 pilot program terminates, the Comptroller General shall submit to the  
 13 Committee on Small Business of the House of Representatives and the  
 14 Committee on Small Business and Entrepreneurship of the Senate a  
 15 report on the pilot program.

16 (2) CONTENTS.—The report under paragraph (1) shall include—

17 (A) the number of veteran/reservist participation loans for which  
 18 fees were reduced under the pilot program;

19 (B) a description of the impact of the pilot program on the gen-  
 20 eral business loan program;

21 (C) an evaluation of the efficacy and potential fraud and abuse  
 22 of the pilot program; and

23 (D) recommendations for improving the pilot program.

## 24 **Chapter 205—Special Purpose Loans**

Sec.

205101. Applicability of chapter 203.

205102. Residential or commercial construction or rehabilitation for sale.

205103. The disabled.

205104. Unemployed or low-income individuals.

205105. Energy measures.

205106. Pollution control facilities.

205107. Certified development companies.

205108. Export working capital program.

205109. Qualified employee trusts.

205110. International trade.

205111. Business development.

205112. Closure of defense installations; termination of defense programs; veterans and cer-  
 tain other individuals associated with defense.

205113. Loans for energy efficient technologies.

205114. Export express program.

205115. Floor plan financing program.

### 25 **§ 205101. Applicability of chapter 203**

26 The provisions of chapter 203 apply to this chapter except to the extent  
 27 that any such provision is inconsistent with a provision of this chapter.

1   **§ 205102. Residential or commercial construction or reha-**  
2                   **bilitation for sale**

3           (a) IN GENERAL.—The Administrator may provide a loan under the gen-  
4   eral business loan program to finance residential or commercial construction  
5   or rehabilitation for sale.

6           (b) LIMITATION.—A loan under subsection (a) shall not be used primarily  
7   for the acquisition of land.

8   **§ 205103. The disabled**

9           The Administrator may provide a guaranteed loan under the general busi-  
10   ness loan program to assist a public or private organization for the disabled  
11   or a disabled individual (including a service-disabled veteran) in establish-  
12   ing, acquiring, or operating a small business concern.

13   **§ 205104. Unemployed or low-income individuals**

14           (a) IMPLEMENTATION.—The general business loan program shall be used  
15   to—

16               (1) assist in the establishment, preservation, and strengthening of  
17               small business concerns and improve the managerial skills employed in  
18               small business concerns, with special attention to, and particular em-  
19               phasis on the preservation or establishment of, small business concerns  
20               that are—

21                       (A) located in urban or rural areas with high proportions of un-  
22                       employed or low-income individuals; or

23                       (B) owned by low-income individuals; and

24               (2) mobilize for those objectives private as well as public managerial  
25               skills and resources.

26           (b) LOAN AUTHORITY.—The Administrator may provide a loan under the  
27   general business loan program to a small business concern or to a qualified  
28   person seeking to establish a small business concern if the Administrator  
29   determines that providing the loan will further the purposes stated in sub-  
30   section (a).

31   **§ 205105. Energy measures**

32           (a) IN GENERAL.—The Administrator may provide a loan under the gen-  
33   eral business loan program to provide assistance (including startup assist-  
34   ance) to a small business concern to enable the small business concern to  
35   design architecturally, or engineer, manufacture, distribute, market, install,  
36   or service, an energy measure.

37           (b) LIMITATION.—The proceeds of a loan under subsection (a) shall not  
38   be used primarily for research and development.

39   **§ 205106. Pollution control facilities**

40           (a) IN GENERAL.—The Administrator may provide a deferred participa-  
41   tion loan under the general business loan program to finance the planning,

1 design, or installation of a pollution control facility for the purposes speci-  
2 fied in section 404 of the Small Business Investment Act of 1958 (15  
3 U.S.C. 694–1), as in effect before the date of repeal of that section.

4 (b) LIMIT ON AMOUNT.—A loan under subsection (a) may not result in  
5 a total amount outstanding and committed (on a deferred basis) to a bor-  
6 rower under the general business loan program of more than \$1,000,000.

7 **§ 205107. Certified development companies**

8 The Administrator may provide financing under the general business loan  
9 program to certified development companies for the purposes of, and subject  
10 to the restrictions in, the certified development company program.

11 **§ 205108. Export working capital program**

12 (a) IN GENERAL.—The Administrator may provide extensions of credit,  
13 standby letters of credit, revolving lines of credit for export purposes, and  
14 other financing to enable small business concerns (including small business  
15 export trading companies and small business export management compa-  
16 nies) to develop foreign markets.

17 (b) RATE OF INTEREST.—A bank or participating lending institution may  
18 establish such a rate of interest on a financing under subsection (a) as is  
19 legal and reasonable.

20 (c) TERMS.—

21 (1) IN GENERAL.—For a loan under this section, the Administrator  
22 shall collect the fee assessed under section 203114 of this title not  
23 more frequently than once each year.

24 (2) UNTAPPED CREDIT.—The Administrator shall not assess a fee  
25 on capital that is not accessed by the small business concern.

26 (d) CONSIDERATIONS.—When considering a loan or guarantee applica-  
27 tion, the Administrator shall give weight to export-related benefits, including  
28 the opening of new markets for United States goods and services abroad  
29 and encouraging the involvement of small business concerns (including agri-  
30 cultural concerns) in the export market.

31 (e) MARKETING.—The Administrator shall aggressively market the export  
32 working capital program to small business concerns.

33 **§ 205109. Qualified employee trusts**

34 (a) DEFINITION OF QUALIFIED EMPLOYEE TRUST.—In this section:

35 (1) TRUST MAINTAINED BY SMALL BUSINESS CONCERN.—The term  
36 “qualified employee trust”, with respect to a small business concern,  
37 means a trust—

38 (A) that forms part of an employee stock ownership plan (as de-  
39 fined in section 4975(e) of the Internal Revenue Code of 1986 (26  
40 U.S.C. 4975(e)) that—

41 (i) is maintained by the small business concern; and

(ii) provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities (as defined in section 4975(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e)) that are allocated to the account of the participant are to be exercised with respect to a corporate matter that (by law or charter) must be decided by a majority vote of outstanding common shares voted; and

(B) the trustee of which enters into an agreement with the Administrator that is binding on the trust and on the small business concern and provides that—

(i) a loan guaranteed under the general business loan program shall be used solely for the purchase of qualifying employer securities of the small business concern;

(ii) all funds acquired by the small business concern in the purchase shall be used by the small business concern solely for the purposes for which the loan was guaranteed;

(iii) the small business concern will provide such funds as are necessary for the timely repayment of the loan, and the property of the small business concern shall be available as security for repayment of the loan; and

(iv) all qualifying employer securities acquired by the trust in the purchase shall be allocated to the accounts of participants in the plan who are entitled to share in the allocation, and each participant has a nonforfeitable right, not later than the date on which the loan is repaid, to all such qualifying employer securities that are allocated to the participant's account.

(2) TRUST MAINTAINED BY EMPLOYEE ORGANIZATION.—A trust maintained by an employee organization may be treated as a qualified employee trust with respect to a small business concern in accordance with regulations prescribed under subsection (f).

(b) IN GENERAL.—The Administrator may guarantee a loan under the general business loan program to a qualified employee trust with respect to a small business concern, on the same basis as if the qualified employee trust were the same entity as the small business concern, for the purpose of purchasing stock of the small business concern under a plan approved by the Administrator that, when carried out, results in the qualified employee trust owning at least 51 percent of the stock of the small business concern.

(c) PLAN.—

1 (1) SUBMISSION WITH APPLICATION.—A plan requiring approval  
2 under subsection (b) shall be submitted to the Administrator by the  
3 trustee of the qualified employee trust with the application for a loan  
4 guarantee.

5 (2) AGREEMENT.—The plan shall include an agreement with the Ad-  
6 ministrator that is binding on the qualified employee trust and on the  
7 small business concern and provides that—

8 (A) not later than the date on which the loan guaranteed under  
9 subsection (b) is repaid (or as soon after that date as is consistent  
10 with the requirements of section 401(a) of the Internal Revenue  
11 Code of 1986 (26 U.S.C. 401(a))), at least 51 percent of the total  
12 stock of the small business concern shall be allocated to the ac-  
13 counts of at least 51 percent of the employees of the small busi-  
14 ness concern who are entitled to share in the allocation;

15 (B) there will be periodic reviews of the role in the management  
16 of the small business concern of employees to whose accounts  
17 stock is allocated; and

18 (C) there will be adequate management to ensure management  
19 expertise and continuity.

20 (d) CRITERIA.—

21 (1) IN GENERAL.—Except as provided in paragraph (2), in determin-  
22 ing whether to guarantee a loan under this section, the Administrator  
23 shall not use the individual business experience or personal assets of  
24 employee-owners as criteria.

25 (2) EXCEPTION.—To the that extent that any employee-owner as-  
26 sumes managerial responsibilities, the Administrator may consider the  
27 business expertise of that employee-owner.

28 (e) TREATMENT OF CORPORATION AS SMALL BUSINESS CONCERN.—For  
29 purposes of this section, a corporation that is controlled by any other person  
30 shall be treated as a small business concern if the corporation would, after  
31 the plan under subsection (c) is carried out, be treated as a small business  
32 concern.

33 (f) REGULATIONS RELATING TO TREATMENT OF A TRUST MAINTAINED  
34 BY AN EMPLOYEE ORGANIZATION.—The Administrator may prescribe regu-  
35 lations under which a trust maintained by an employee organization may  
36 be treated as a qualified employee trust with respect to a small business  
37 concern if—

38 (1) the employee organization represents at least 51 percent of the  
39 employees of the small business concern;

40 (2) the small business concern maintains a plan that—

(A) is an employee benefit plan that is designed to invest primarily in qualifying employer securities (as defined in section 4975(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e)));

(B) provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities that are allocated to the account of the participant are to be exercised with respect to a corporate matter that (by law or charter) must be decided by a majority vote of the outstanding common shares voted;

(C) provides that each participant who is entitled to distribution from the plan has a right, in the case of qualifying employer securities that are not readily tradable on an established market, to require that the small business concern repurchase the securities under a fair valuation formula; and

(D) meets such other requirements (similar to requirements applicable to employee stock ownership plans (as defined in section 4975(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e))) as the Administrator may prescribe; and

(3) in the case of a loan guarantee under the general business loan program, the employee organization enters into an agreement with the Administrator that is described in subsection (a)(1)(B).

(g) REPORTS.—The Administrator shall—

(1) compile a separate list of applications for assistance under this section, indicating which applications are accepted and which denied; and

(2) periodically submit to Congress a report on the status of employee-owned firms assisted by the Administrator.

#### **§ 205110. International trade**

(a) IN GENERAL.—If the Administrator determines that a loan guaranteed under the general business loan program will allow an eligible small business concern that is engaged in or adversely affected by international trade to improve its competitive position, the Administrator may provide a loan guarantee to assist the small business concern—

(1) in the financing of the acquisition, construction, renovation, modernization, improvement, or expansion of productive facilities or equipment to be used in the United States in the production of a good or service involved in international trade;

(2) in the refinancing of existing indebtedness that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under any other provision of this division; or

1 (3) by providing working capital.

2 (b) SECURITY.—

3 (1) IN GENERAL.—Except as provided in paragraph (2), a loan  
4 under this section shall be secured by a 1st lien position or 1st mort-  
5 gage on the property or equipment financed by the loan or on other  
6 assets of the small business concern.

7 (2) EXCEPTION.—A loan under this section may be secured by a 2d  
8 lien position on the property or equipment financed by the loan or on  
9 other assets of the small business concern if the Administrator deter-  
10 mines that the lien provides adequate assurance of the payment of the  
11 loan.

12 (c) ENGAGEMENT IN INTERNATIONAL TRADE.—For purposes of this sec-  
13 tion, a small business concern shall be considered to be engaged in inter-  
14 national trade if, as determined by the Administrator, the small business  
15 concern is in a position to expand existing export markets or develop new  
16 export markets.

17 (d) ADVERSE EFFECT OF INTERNATIONAL TRADE.—For purposes of this  
18 section, a small business concern shall be considered to be adversely affected  
19 by international trade if, as determined by the Administrator, the small  
20 business concern—

21 (1) is confronting increased competition with foreign firms in the rel-  
22 evant market; and

23 (2) is injured by such competition.

24 (e) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of sub-  
25 section (d)(2), the Administrator shall accept any finding of injury by the  
26 International Trade Commission or any finding of injury by the Secretary  
27 of Commerce under chapter 3 of title II of the Trade Act of 1974 (19  
28 U.S.C. 2341 et seq.).

29 (f) LIST OF EXPORT FINANCE LENDERS.—

30 (1) PUBLICATION.—The Administrator shall publish an annual list  
31 of the banks and participating lending institutions that, during the 1-  
32 year period ending on the date of publication of the list, have made  
33 loans guaranteed by the Administrator under—

34 (A) this section;

35 (B) section 205108 of this title; or

36 (C) section 205114 of this title.

37 (2) AVAILABILITY.—The Administrator shall—

38 (A) post the list published under paragraph (1) on the SBA  
39 website; and

40 (B) make the list available, on request, at each SBA district of-  
41 fice.

1    **§ 205111. Business development**

2       (a) IN GENERAL.—The Administrator may make a loan under the gen-  
3       eral business loan program to a small business concern that is eligible for  
4       assistance under the business development program.

5       (b) REQUIREMENTS.—Assistance may be provided under subsection (a) if  
6       the Administrator determines that—

7           (1) the type and amount of assistance requested by a small business  
8           concern is not otherwise available on reasonable terms from other  
9           sources;

10          (2) with the assistance, the small business concern has a reasonable  
11          prospect for operating soundly and profitably within a reasonable pe-  
12          riod of time;

13          (3) the proceeds of the assistance will be used within a reasonable  
14          time—

15            (A) for plant construction, conversion, or expansion, including  
16            the acquisition of equipment, facilities, machinery, supplies, or ma-  
17            terial; or

18            (B) to supply the small business concern with working capital  
19            to be used in the manufacture of articles, equipment, supplies, or  
20            material for defense or civilian production or as may be necessary  
21            to ensure a well-balanced national economy; and

22          (4) the assistance is of such sound value as reasonably to ensure that  
23          the terms under which the assistance is provided will not be breached  
24          by the small business concern.

25       (c) LIMIT ON AMOUNT.—

26           (1) IN GENERAL.—No loan shall be made under this section if the  
27           total amount outstanding and committed (on a deferred basis, through  
28           a participation on an immediate basis, or directly) to the borrower  
29           under the general business loan program would exceed \$750,000.

30           (2) AMOUNT OF PARTICIPATION.—Subject to paragraph (1), in an  
31           agreement to participate in a loan on a deferred (guaranteed) basis,  
32           participation by the Administrator shall be not less than 85 percent of  
33           the balance of the financing outstanding at the time of disbursement.

34       (d) RATE OF INTEREST.—The rate of interest on a financing made on  
35       a deferred (guaranteed) basis shall be an amount that is legal and reason-  
36       able.

37       (e) LIMITATIONS.—

38           (1) IN GENERAL.—A financing under this section shall be subject to  
39           the limitations stated in this subsection.



1 (2) IMMEDIATE FINANCING.—No immediate participation may be  
2 purchased unless it is shown that a deferred participation is not avail-  
3 able.

4 (3) DIRECT FINANCING.—No direct financing may be made unless  
5 it is shown that a participation is unavailable.

6 (f) SECURED DEBT INSTRUMENT.—A direct loan or the Administrator’s  
7 share of an immediate participation loan under this section shall be any se-  
8 cured debt instrument—

9 (1) that is subordinated by its terms to all other borrowings of the  
10 issuer;

11 (2) the rate of interest on which does not exceed the current average  
12 market yield on outstanding marketable obligations of the United  
13 States with remaining periods to maturity comparable to the average  
14 maturities of such loans and adjusted to the nearest 0.125 percent;

15 (3) the term of which is not more than 25 years;

16 (4) the principal on which is amortized at such a rate as the Admin-  
17 istrator considers appropriate; and

18 (5) the interest on which is payable not less often than annually.

19 **§ 205112. Closure of defense installations; termination of de-**  
20 **fense programs; veterans and certain other indi-**  
21 **viduals associated with defense**

22 (a) DEFINITION OF QUALIFIED INDIVIDUAL.—In this section, the term  
23 “qualified individual” means—

24 (1) a member of the Armed Forces honorably discharged from active  
25 duty involuntarily or under a program providing bonuses or other in-  
26 ducements to encourage voluntary separation or early retirement;

27 (2) a civilian employee of the Department of Defense involuntarily  
28 separated from Federal service or retired under a program offering in-  
29 ducements to encourage early retirement; or

30 (3) an employee of a prime contractor, subcontractor, or supplier at  
31 any tier of a Department of Defense program whose employment is in-  
32 voluntarily terminated (or voluntarily terminated under a program of-  
33 fering inducements to encourage voluntary separation or early retire-  
34 ment) due to the termination or substantial reduction of a Department  
35 of Defense program.

36 (b) LOANS.—The Administrator may make a loan on a guaranteed basis  
37 under the general business loan program—

38 (1) to a small business concern that has been (or can reasonably be  
39 expected to be) detrimentally affected by—

40 (A) the closure or substantial reduction of a Department of De-  
41 fense installation; or

1 (B) the termination or substantial reduction of a Department  
2 of Defense program on which the small business concern was a  
3 prime contractor or subcontractor or supplier at any tier; or

4 (2) to a qualified individual or a veteran seeking to establish (or ac-  
5 quire) and operate a small business concern.

6 (c) RESOLUTION OF DOUBT.—Recognizing that greater risk may be asso-  
7 ciated with a loan to a small business concern described in subsection  
8 (b)(1), in making a determination regarding the sound value of the proposed  
9 loan under section 203104, any reasonable doubt concerning the small busi-  
10 ness concern’s proposed business plan for transition to nondefense-related  
11 markets shall be resolved in favor of the loan applicant.

12 (d) AMOUNTS OF LOANS.—Loans under this section shall be authorized  
13 in such amounts as are provided in advance in appropriation Acts for the  
14 purposes of loans under this section.

15 (e) JOB CREATION AND COMMUNITY BENEFIT.—In providing assistance  
16 under this section, the Administrator shall develop procedures to ensure, to  
17 the maximum extent practicable, that the assistance is used for projects  
18 that—

19 (1) have the greatest potential for—

20 (A) creating new jobs for individuals whose employment is invol-  
21 untarily terminated due to reductions in Federal defense expendi-  
22 tures; or

23 (B) preventing the loss of jobs by employees of small business  
24 concerns described in subsection (b)(1); and

25 (2) have substantial potential for stimulating new economic activity  
26 in communities most affected by reductions in Federal defense expendi-  
27 tures.

28 **§ 205113. Loans for energy efficient technologies**

29 (a) DEFINITIONS.—In this section:

30 (1) COST.—The term “cost” has the meaning given the term in sec-  
31 tion 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

32 (2) COVERED ENERGY EFFICIENCY LOAN.—The term “covered en-  
33 ergy efficiency loan” means a loan—

34 (A) made under the general business loan program; and

35 (B) the proceeds of which are used to—

36 (i) purchase energy efficient designs, equipment, or fix-  
37 tures; or

38 (ii) reduce the energy consumption of the borrower by 10  
39 percent or more.

40 (3) PILOT PROGRAM.—The term “pilot program” means the pilot  
41 program established under subsection (b).

1 (b) ESTABLISHMENT.—The Administrator shall establish and carry out a  
2 pilot program under which the Administrator shall reduce the fees for cov-  
3 ered energy efficiency loans.

4 (c) DURATION.—The pilot program shall terminate at the end of the 2d  
5 full fiscal year after the date on which the Administrator establishes the  
6 pilot program.

7 (d) MAXIMUM PARTICIPATION.—A covered energy efficiency loan shall in-  
8 clude the maximum participation levels by the Administrator permitted for  
9 loans made under this division.

10 (e) FEES.—

11 (1) IN GENERAL.—The fee on a covered energy efficiency loan shall  
12 be equal to 50 percent of the fee otherwise applicable to that loan  
13 under 203111 of this title.

14 (2) WAIVER.—The Administrator may waive paragraph (1) for a fis-  
15 cal year if—

16 (A) for the fiscal year before that fiscal year, the annual rate  
17 of default of covered energy efficiency loans exceeds that of loans  
18 made under this division that are not covered energy efficiency  
19 loans;

20 (B) the cost to the Administrator of making loans under this  
21 division—

22 (i) is greater than zero; and

23 (ii) is directly attributable to the cost of making covered  
24 energy efficiency loans; and

25 (C) no additional sources of revenue authority are available to  
26 reduce the cost of making loans under this division to zero.

27 (3) EFFECT OF WAIVER.—If the Administrator waives the reduction  
28 of fees under paragraph (2), the Administrator—

29 (A) shall not assess or collect fees in an amount greater than  
30 necessary to ensure that the cost of the program under this divi-  
31 sion is not greater than zero; and

32 (B) shall reinstate the fee reductions under paragraph (1) when  
33 the conditions in paragraph (2) no longer apply.

34 (4) NO INCREASE OF FEES.—The Administrator shall not increase  
35 the fees under section 203111 of this title on loans made under this  
36 division that are not covered energy efficiency loans as a direct result  
37 of the pilot program.

38 (f) GAO REPORT.—

39 (1) IN GENERAL.—Not later than 1 year after the date on which the  
40 pilot program terminates, the Comptroller General shall submit to the  
41 Committee on Small Business of the House of Representatives and the

1 Committee on Small Business and Entrepreneurship of the Senate a  
2 report on the pilot program.

3 (2) CONTENTS.—The report under paragraph (1) shall include—

4 (A) the number of covered energy efficiency loans for which fees  
5 were reduced under the pilot program;

6 (B) a description of the energy efficiency savings with the pilot  
7 program;

8 (C) a description of the impact of the pilot program on the pro-  
9 gram under this division;

10 (D) an evaluation of the efficacy and potential fraud and abuse  
11 of the pilot program; and

12 (E) recommendations for improving the pilot program.

13 **§ 205114. Export express program**

14 (a) IN GENERAL.—The Administrator may guarantee the timely payment  
15 of an express loan to a small business concern made for an export develop-  
16 ment activity.

17 (b) LEVEL OF PARTICIPATION.—

18 (1) MAXIMUM AMOUNT.—The maximum amount of an express loan  
19 guaranteed under this section shall be \$500,000.

20 (2) PERCENTAGE.—For an express loan guaranteed under this sec-  
21 tion, the Administrator shall guarantee—

22 (A) 90 percent of a loan that is not more than \$350,000; and

23 (B) 75 percent of a loan that is more than \$350,000 and not  
24 more than \$500,000.

25 **§ 205115. Floor plan financing program**

26 (a) DEFINITION OF ELIGIBLE RETAIL GOOD.—In this section:

27 (1) IN GENERAL.—The term “eligible retail good” means a good for  
28 which a title may be obtained under State law.

29 (2) INCLUSIONS.—The term “eligible retail good” includes an auto-  
30 mobile, recreational vehicle, boat, or manufactured home.

31 (b) PROGRAM.—The Administrator may guarantee the timely payment of  
32 an open-end extension of credit to a small business concern, the proceeds  
33 of which may be used for the purchase of eligible retail goods for resale.

34 (c) AMOUNT.—An open-end extension of credit guaranteed under this sec-  
35 tion shall be in an amount not less than \$500,000 and not more than  
36 \$5,000,000.

37 (d) TERM.—An open-end extension of credit guaranteed under this sec-  
38 tion shall have a term of not more than 5 years.

39 (e) GUARANTEE PERCENTAGE.—The Administrator may guarantee—

40 (1) not less than 60 percent of an open-end extension of credit under  
41 this section; and

1 (2) not more than 75 percent of an open-end extension of credit  
2 under this paragraph.

3 (f) ADVANCE RATE.—The lender for an open-end extension of credit  
4 guaranteed under this section may allow the borrower to draw funds on the  
5 line of credit in an amount equal to not more than 100 percent of the value  
6 of the eligible retail goods to be purchased.

7 (g) REPEAL.—Effective September 30, 2013, this section, the item relat-  
8 ing to this section in the table of contents of this chapter, and the para-  
9 graph defining “floor plan financing program” in section 101102 of this  
10 title are repealed.

## 11 **Chapter 207—Small Business Lending** 12 **Companies and Non-Federally Regulated** 13 **Lenders**

Sec.

207101. Authority to regulate.

207102. Capital directive.

207103. Civil action.

207104. Revocation or suspension of loan authority; cease and desist orders.

207105. Removal or suspension of management officials.

207106. Appointment of receiver.

207107. Taking of possession of assets.

207108. Reports.

### 14 **§ 207101. Authority to regulate**

15 The Administrator—

16 (1) may supervise the safety and soundness of small business lending  
17 companies and non-federally regulated lenders;

18 (2) in accordance with the purposes of this subtitle, may—

19 (A) regulate small business lending companies;

20 (B) set capital standards for small business lending companies;

21 (C) examine small business lending companies; and

22 (D) enforce laws governing small business lending companies;

23 and

24 (3) in accordance with the purposes of this subtitle, may—

25 (A) regulate non-federally regulated lenders;

26 (B) examine non-federally regulated lenders; and

27 (C) enforce laws governing the lending activities of non-federally  
28 regulated lenders under the general business loan program.

### 29 **§ 207102. Capital directive**

30 (a) IN GENERAL.—If the Administrator determines that a small business  
31 lending company is being operated in an imprudent manner, the Adminis-  
32 trator may, in addition to any other action authorized by law, issue a direc-  
33 tive to the small business lending company to increase capital to such level  
34 as the Administrator determines will result in the safe and sound operation  
35 of the small business lending company.

1 (b) LIMIT ON DELEGABILITY.—The Administrator may not delegate the  
2 authority granted under subsection (a) except to an Associate Deputy Ad-  
3 ministrator.

4 (c) REGULATIONS.—The Administrator shall issue regulations outlining  
5 the conditions under which the Administrator may determine the level of  
6 capital under subsection (a).

7 **§ 207103. Civil action**

8 If a small business lending company violates this subtitle or subtitle I,  
9 the Administrator may bring a civil action in United States district court  
10 to terminate the rights, privileges, and franchises of the small business lend-  
11 ing company under this subtitle or subtitle I.

12 **§ 207104. Revocation or suspension of loan authority; cease**  
13 **and desist orders**

14 (a) REVOCATION OR SUSPENSION OF LOAN AUTHORITY.—

15 (1) IN GENERAL.—The Administrator may revoke or suspend the au-  
16 thority of a small business lending company or a non-federally regu-  
17 lated lender to make, service, or liquidate business loans under the gen-  
18 eral business loan program—

19 (A) for false statements knowingly made in any written submis-  
20 sion required under this subtitle;

21 (B) for omission of a material fact from any written submission  
22 required under this subtitle;

23 (C) for willful or repeated violation of this subtitle;

24 (D) for willful or repeated violation of any condition imposed by  
25 the Administrator with respect to any application, request, or  
26 agreement under this subtitle; or

27 (E) for violation of any cease and desist order of the Adminis-  
28 trator under this chapter.

29 (2) LIMITATION ON DELEGABILITY.—The Administrator may dele-  
30 gate power to revoke or suspend authority under paragraph (1) only  
31 to the Deputy Administrator and only if the Administrator is unavail-  
32 able to take the action.

33 (3) PROCEDURE.—

34 (A) IN GENERAL.—Except as provided in subparagraph (B), the  
35 Administrator may revoke or suspend authority under paragraph  
36 (1) only after a hearing under subsection (c).

37 (B) SUSPENSION BEFORE HEARING.—

38 (i) IN GENERAL.—The Administrator, after finding ex-  
39 traordinary circumstances and in order to protect the finan-  
40 cial or legal position of the United States, may issue a sus-

1 pension order without conducting a hearing under subsection  
2 (c).

3 (ii) HEARING.—If the Administrator issues a suspension  
4 under clause (i), the Administrator shall, within 2 business  
5 days after issuance of the suspension, follow the procedure  
6 specified in subsection (c).

7 (C) ACTION BY THE ADMINISTRATOR AFTER HEARING BY AD-  
8 MINISTRATIVE LAW JUDGE.—

9 (i) IN GENERAL.—A revocation or suspension under para-  
10 graph (1) shall be made by the Administrator, except that the  
11 Administrator shall delegate to an administrative law judge  
12 appointed under section 3105 of title 5 the authority to con-  
13 duct any hearing required under subsection (c).

14 (ii) BASIS OF DECISION.—The Administrator shall base the  
15 decision to revoke or suspend on the record of the hearing.

16 (4) EFFECTIVE PERIOD OF SUSPENSION.—A suspension under para-  
17 graph (1) shall remain in effect until the Administrator makes a deci-  
18 sion under paragraph (3)(C) to permanently revoke the authority of the  
19 small business lending company or non-federally regulated lender, sus-  
20 pend the authority for a time certain, or terminate the suspension.

21 (5) NOTIFICATION OF BORROWERS.—On revocation of the authority  
22 of a small business lending company or non-federally regulated lender  
23 under paragraph (1), the small business lending company or non-feder-  
24 ally regulated lender shall, and the Administrator may, notify borrow-  
25 ers of the revocation and of the appointment of a new entity to service  
26 the borrowers' loans.

27 (b) CEASE AND DESIST ORDERS.—

28 (1) IN GENERAL.—If a small business lending company, a non-feder-  
29 ally regulated lender, or other person violates this subtitle or subtitle  
30 I or is engaging or is about to engage in any act or practice that con-  
31 stitutes or will constitute a violation of this subtitle or subtitle I, the  
32 Administrator, after an opportunity for hearing under subsection (c),  
33 may order that—

34 (A) the small business lending company, non-federally regulated  
35 lender, or other person cease and desist from engaging in the act  
36 or practice or in any failure to act;

37 (B) the small business lending company, non-federally regulated  
38 lender, or other person take such action or to refrain from such  
39 action as the Administrator considers necessary to ensure compli-  
40 ance with this subtitle; or

1 (C) the authority of the small business lending company or non-  
2 federally regulated lender to lend be suspended under subsection  
3 (a).

4 (2) LIMITATION ON DELEGABILITY.—The Administrator may dele-  
5 gate the authority under paragraph (1) only to the Deputy Adminis-  
6 trator and only if the Administrator is unavailable to take the action.

7 (3) ORDER BEFORE HEARING.—

8 (A) IN GENERAL.—The Administrator, after finding extraor-  
9 dinary circumstances and in order to protect the financial or legal  
10 position of the United States, may issue a cease and desist order  
11 without conducting a hearing under subsection (c).

12 (B) HEARING.—If the Administrator issues a cease and desist  
13 order under subparagraph (A), the Administrator shall within 2  
14 business days follow the procedures specified in subsection (c).

15 (c) PROCEDURE.—

16 (1) ORDER TO SHOW CAUSE.—

17 (A) IN GENERAL.—Before revoking or suspending authority  
18 under subsection (a) or issuing a cease and desist order under  
19 subsection (b), the Administrator shall serve an order to show  
20 cause on the small business lending company, non-federally regu-  
21 lated lender, or other person why an order revoking or suspending  
22 the authority or a cease and desist order should not be issued.

23 (B) CONTENTS.—An order under subparagraph (A) shall—

24 (i) contain a statement of the matters of fact and law as-  
25 serted by the Administrator and the legal authority and juris-  
26 diction under which a hearing is to be held; and

27 (ii) state that a hearing will be held before an administra-  
28 tive law judge at a time and place stated in the order.

29 (2) HEARING.—A hearing shall be conducted under sections 554,  
30 556, and 557 of title 5.

31 (3) ORDER OF REVOCATION OR SUSPENSION; CEASE AND DESIST  
32 ORDER.—

33 (A) IN GENERAL.—If, after hearing or a waiver of hearing, the  
34 Administrator determines that an order revoking or suspending  
35 the authority or a cease and desist order should be issued, the Ad-  
36 ministrator shall promptly issue the order.

37 (B) CONTENTS.—An order under subparagraph (A) shall—

38 (i) include a statement of the findings of the Administrator  
39 and the grounds and reasons for the findings; and

40 (ii) specify the effective date of the order.



1 (C) SERVICE.—The Administrator shall cause an order under  
2 subparagraph (A) to be served on the small business lending com-  
3 pany, non-federally regulated lender, or other person that is sub-  
4 ject to the order.

5 (4) WITNESSES.—A witness summoned before the Administrator  
6 shall be paid by the party at whose instance the witness is called the  
7 same fees and mileage that are paid witnesses in the courts of the  
8 United States.

9 (d) FINAL AGENCY ACTION.—An order under subsection (c)(3) is final  
10 agency action for purposes of chapter 7 of title 5.

11 (e) JUDICIAL REVIEW.—An adversely affected party shall have 20 days  
12 from the date of issuance of an order under subsection (c)(3) to seek judi-  
13 cial review in United States district court.

14 **§ 207105. Removal or suspension of management officials**

15 (a) DEFINITION OF MANAGEMENT OFFICIAL.—In this section, the term  
16 “management official” means an officer, director, general partner, manager,  
17 employee, agent, or other participant in the management of the affairs of  
18 a small business lending company’s or non-federally regulated lender’s ac-  
19 tivities under the general business loan program.

20 (b) REMOVAL OF MANAGEMENT OFFICIAL.—

21 (1) NOTICE.—The Administrator may serve on a management offi-  
22 cial a written notice of the Administrator’s intention to remove that  
23 management official if, in the opinion of the Administrator, the man-  
24 agement official—

25 (A) willfully and knowingly commits a substantial violation of—

26 (i) this subtitle or subtitle I (including any regulation is-  
27 sued under this subtitle or subtitle I);

28 (ii) a final cease and desist order under this subtitle; or

29 (iii) any agreement under this subtitle by—

30 (I) the management official; or

31 (II) the small business lending company or non-feder-  
32 ally regulated lender in which the management official is  
33 a participant; or

34 (B) willfully and knowingly commits a substantial breach of a  
35 fiduciary duty of that participant as a management official, if the  
36 violation or breach of fiduciary duty is one involving personal dis-  
37 honesty on the part of the management official.

38 (2) CONTENTS.—A notice under paragraph (1) shall—

39 (A) contain a statement of the facts constituting grounds for  
40 the notice; and

1 (B) state a time and place at which a hearing under paragraph  
2 (3) will be held on the notice.

3 (3) HEARING.—

4 (A) TIMING.—A hearing under sections 554, 556, and 557 of  
5 title 5 shall be held not earlier than 30 nor later than 60 days  
6 after the date of service of notice of the hearing, unless an earlier  
7 or a later date is set by the Administrator at the request of—

8 (i) the management official, for good cause; or

9 (ii) the Attorney General.

10 (B) CONSENT.—Unless the management official appears at a  
11 hearing under this subsection in person or by an authorized rep-  
12 resentative, the management official shall be deemed to have con-  
13 sented to the issuance of an order of removal under paragraph (1).

14 (4) ORDER OF REMOVAL.—

15 (A) IN GENERAL.—In the event of consent under paragraph  
16 (3)(B), or if on the record made at a hearing under this section,  
17 the Administrator finds that any of the grounds specified in the  
18 notice of removal has been established, the Administrator may  
19 issue such orders of removal from office as the Administrator con-  
20 sider appropriate.

21 (B) EFFECTIVENESS.—An order under subparagraph (A)  
22 shall—

23 (i) take effect 30 days after the date of service on the sub-  
24 ject small business lending company or non-federally regu-  
25 lated lender and the management official concerned (except in  
26 the case of an order issued on consent as described in para-  
27 graph (3)(B), which shall become effective at the time speci-  
28 fied in the order); and

29 (ii) remain effective and enforceable, except to such extent  
30 as the order is stayed, modified, terminated, or set aside by  
31 action of the Administrator or a court in accordance with this  
32 chapter.

33 (c) AUTHORITY TO SUSPEND OR PROHIBIT PARTICIPATION.—

34 (1) IN GENERAL.—To protect a small business lending company, a  
35 non-federally regulated lender, or the interests of SBA or the United  
36 States, the Administrator may suspend from office or prohibit from  
37 further participation in any manner in the management or conduct of  
38 the affairs of a small business lending company or non-federally regu-  
39 lated lender a management official by written notice to that effect  
40 served on the management official.

(2) PROHIBITED ACTIVITIES.—A suspension or prohibition under paragraph (1) may prohibit the management official from making, servicing, reviewing, approving, or liquidating any loan under the general business loan program.

(3) EFFECTIVENESS.—A suspension or prohibition under paragraph (1)—

(A) shall take effect on service of notice under subsection (b); and

(B) unless stayed by a court in proceedings under paragraph (4), shall remain in effect—

(i) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under subsection (b); and

(ii) until such time as the Administrator dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

(4) JUDICIAL REVIEW OF SUSPENSION PRIOR TO HEARING.—Not later than 10 days after a management official is suspended or prohibited from participation under paragraph (1), the management official may apply to a United States district court for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served on the management official under subsection (b).

(d) AUTHORITY TO SUSPEND ON CRIMINAL CHARGES.—

(1) IN GENERAL.—If a management official is charged in an information, indictment, or complaint authorized by a United States attorney, with a felony involving dishonesty or breach of trust, the Administrator may, by written notice served on the management official, suspend the management official from office or prohibit the management official from further participation in any manner in the management or conduct of the affairs of the small business lending company or non-federally regulated lender in which the management official is a participant described in subsection (a).

(2) EFFECTIVENESS.—A suspension or prohibition under paragraph (1) shall remain in effect until the information, indictment, or complaint is finally disposed of, or until terminated by the Administrator or by order of a United States district court.

(3) AUTHORITY ON CONVICTION.—

(A) IN GENERAL.—If a judgment of conviction with respect to an offense described in paragraph (1) is entered against a man-

agement official, at such time as the judgment is not subject to further judicial review, the Administrator may issue and serve on the management official an order removing the management official, effective on service of a copy of the order on the small business lending company or non-federally regulated lender in which the management official is a participant described in subsection (a).

(B) JUDGMENT NOT SUBJECT TO FURTHER JUDICIAL REVIEW.—For purposes of subparagraph (A), further judicial review does not include the possibility of review of a petition for a writ of habeas corpus.

(4) AUTHORITY ON DISMISSAL OR OTHER DISPOSITION.—A finding of not guilty or other disposition of charges described in paragraph (1) shall not preclude the Administrator from instituting proceedings under section 207104 of this title.

(e) NOTIFICATION TO SMALL BUSINESS LENDING COMPANY OR NON-FEDERALLY REGULATED LENDER.—A copy of a notice required to be served on a management official under this chapter shall also be served on the small business lending company or non-federally regulated lender in which the management official is a participant described in subsection (a).

(f) DECISION.—After a hearing under this section, and not later than 30 days after the Administrator notifies the parties that the case has been submitted for final decision, the Administrator shall—

(1) render a decision in the matter (which shall include findings of fact on which its decision is predicated); and

(2) issue and cause to be served on each party to the proceeding an order or orders consistent with this chapter.

(g) FINAL AGENCY ACTION.—A decision under subsection (f) shall constitute final agency action for purposes of chapter 7 of title 5.

(h) JUDICIAL REVIEW.—An adversely affected party shall have 20 days from the date of issuance of the order to seek judicial review in United States district court.

### **§ 207106. Appointment of receiver**

(a) IN GENERAL.—In a civil action under this division, the court may—

(1) take exclusive jurisdiction over a small business lending company or non-federally regulated lender; and

(2) appoint a receiver to hold and administer the assets of the small business lending company or non-federally regulated lender.

(b) APPOINTMENT OF ADMINISTRATOR.—On request of the Administrator, the court may appoint the Administrator as a receiver under subsection (a).

1    **§ 207107. Taking of possession of assets**

2       (a) TAKING OF POSSESSION OF LOAN PORTFOLIO.—If a small business  
3       lending company or non-federally regulated lender is not in compliance with  
4       capital requirements or is insolvent, the Administrator may take possession  
5       of the portfolio of loans guaranteed by the Administrator and sell the loans  
6       to a 3d party by means of a receiver appointed under section 207106 of  
7       this title.

8       (b) TAKING OF POSSESSION OF SERVICING ACTIVITIES.—If a small busi-  
9       ness lending company or non-federally regulated lender is not in compliance  
10      with capital requirements or is insolvent or otherwise operating in an unsafe  
11      and unsound condition, the Administrator may take possession of servicing  
12      activities of loans that are guaranteed by the Administrator and sell the  
13      servicing rights to a 3d party by means of a receiver appointed under sec-  
14      tion 207106 of this title.

15    **§ 207108. Reports**

16      (a) CIVIL PENALTY FOR FAILURE TO FILE.—

17          (1) IN GENERAL.—A small business lending company or non-feder-  
18          ally regulated lender that violates a regulation or written directive is-  
19          sued by the Administrator regarding the filing of a regular or special  
20          report shall pay to the United States a civil penalty of not more than  
21          \$5,000 for each day of the continuance of the failure to file the report,  
22          unless it is shown that the violation is due to reasonable cause and not  
23          due to willful neglect.

24          (2) ENFORCEMENT.—A civil penalty under paragraph (1) may be en-  
25          forced in a civil action brought by the Administrator.

26          (3) INAPPLICABILITY TO CERTAIN SMALL BUSINESS LENDING COM-  
27          PANIES.—Paragraph (1) does not apply to an affiliate of a small busi-  
28          ness lending company that procures at least 10 percent of its annual  
29          purchasing requirements from small manufacturers.

30      (b) EXEMPTION.—

31          (1) IN GENERAL.—If the Administrator determines that granting an  
32          exemption would not be inconsistent with the public interest or the pro-  
33          tection of SBA, the Administrator may exempt a small business lending  
34          company or non-federally regulated lender from subsection (a)—

35              (A) in whole or in part; and

36              (B) on such terms and conditions and for such period of time  
37          as the Administrator considers necessary and appropriate.

38          (2) PROCEDURE.—The Administrator may grant an exemption under  
39          paragraph (1)—

40              (A) by regulation prescribed after an opportunity for notice and  
41          comment; or

1 (B) on application of an interested party, at any time previous  
 2 to a violation described in subsection (a), by order, after notice  
 3 and opportunity for hearing under sections 554, 556, and 557 of  
 4 title 5.

5 (c) ALTERNATIVE REQUIREMENTS.—The Administrator may for purposes  
 6 of this section make any alternative requirement that the Administrator  
 7 considers to be appropriate to a situation.

## 8 **Division C—Intermediary Lending Pilot** 9 **Program**

### 10 **Chapter 211—Intermediary Lending Pilot** 11 **Program**

Sec.

- 211101. Definitions.
- 211102. Establishment.
- 211103. Purposes.
- 211104. Loans to eligible intermediaries.
- 211105. Loans to small business concerns.
- 211106. Regulations.
- 211107. Availability of funds.
- 211108. Termination of authority.

#### 12 **§ 211101. Definitions**

13 In this chapter:

14 (1) ELIGIBLE INTERMEDIARY.—

15 (A) IN GENERAL.—The term “eligible intermediary” means a  
 16 private, nonprofit entity that—

17 (i) seeks or has been awarded a loan from the Adminis-  
 18 trator to make loans to small business concerns under this  
 19 chapter; and

20 (ii) has not less than 1 year of experience making loans to  
 21 startup, newly established, or growing small business con-  
 22 cerns.

23 (B) INCLUSIONS.—The term “eligible intermediary” includes—

24 (i) a private, nonprofit community development corpora-  
 25 tion;

26 (ii) a consortium of private, nonprofit organizations or non-  
 27 profit community development corporations; and

28 (iii) an agency of or nonprofit entity established by a Na-  
 29 tive American Tribal Government.

30 (2) PROGRAM.—The term “program” means the small business  
 31 intermediary lending pilot program established under section 211102 of  
 32 this title.

#### 33 **§ 211102. Establishment**

34 There is established a 3-year small business intermediary lending pilot  
 35 program under which the Administrator may make direct loans to eligible

1 intermediaries for the purpose of making loans to startup, newly estab-  
2 lished, and growing small business concerns.

3 **§ 211103. Purposes**

4 The purposes of the program are—

5 (1) to assist small business concerns in areas suffering from a lack  
6 of credit due to poor economic conditions or changes in the financial  
7 market; and

8 (2) to establish a loan program under which the Administrator may  
9 provide loans to eligible intermediaries to enable the eligible inter-  
10 mediaries to provide loans to startup, newly established, and growing  
11 small business concerns for working capital, real estate, or the acquisi-  
12 tion of materials, supplies, or equipment.

13 **§ 211104. Loans to eligible intermediaries**

14 (a) APPLICATION.—An eligible intermediary desiring a loan under the  
15 program shall submit an application to the Administrator that describes—

16 (1) the type of small business concerns to be assisted;

17 (2) the size and range of loans to be made;

18 (3) the interest rate and terms of loans to be made;

19 (4) the geographic area to be served and the economic, poverty, and  
20 unemployment characteristics of the area;

21 (5) the status of small business concerns in the area to be served  
22 and an analysis of the availability of credit; and

23 (6) the qualifications of the applicant to carry out this chapter.

24 (b) LOAN LIMIT.—No loan may be made to an eligible intermediary  
25 under the program if the total amount outstanding and committed to the  
26 eligible intermediary by the Administrator would, as a result of the loan,  
27 exceed \$1,000,000 during the participation of the eligible intermediary in  
28 the program.

29 (c) LOAN TERM.—A loan made by the Administrator under the program  
30 shall be for a term of 20 years.

31 (d) INTEREST RATE.—A loan made by the Administrator to an eligible  
32 intermediary under the program shall bear an annual interest rate equal to  
33 1.00 percent.

34 (e) NO FEE OR COLLATERAL.—The Administrator shall not charge any  
35 fee or require collateral with respect to any loan made to an eligible inter-  
36 mediary under the program.

37 (f) DELAYED PAYMENT.—The Administrator shall not require the pay-  
38 ment of principal or interest on a loan made to an eligible intermediary  
39 under the program during the 2-year period beginning on the date of the  
40 initial disbursement of funds under the loan.

1 (g) MAXIMUM NUMBER OF PARTICIPANTS; MAXIMUM AMOUNTS.—During  
 2 each of fiscal years 2011, 2012, and 2013, the Administrator may make  
 3 loans under the program—

4 (1) to not more than 20 eligible intermediaries; and

5 (2) in a total amount of not more than \$20,000,000.

6 **§ 211105. Loans to small business concerns**

7 (a) IN GENERAL.—The Administrator, through an eligible intermediary,  
 8 shall make loans to startup, newly established, and growing small business  
 9 concerns for working capital, real estate, and the acquisition of materials,  
 10 supplies, furniture, fixtures, and equipment.

11 (b) MAXIMUM AMOUNT.—An eligible intermediary shall not make a loan  
 12 under the program of more than \$200,000 to any 1 small business concern.

13 (c) INTEREST RATE.—A loan made by an eligible intermediary to a small  
 14 business concern under the program—

15 (1) may have a fixed or a variable interest rate; and

16 (2) shall bear an interest rate specified by the eligible intermediary  
 17 in the application of the eligible intermediary for a loan under the pro-  
 18 gram.

19 (d) REVIEW RESTRICTIONS.—The Administrator shall not review individ-  
 20 ual loans made by an eligible intermediary to a small business concern be-  
 21 fore approval of the loan by the eligible intermediary.

22 **§ 211106. Regulations**

23 The Administrator shall issue regulations to carry out this chapter.

24 **§ 211107. Availability of funds**

25 Any amount provided to the Administrator for the purposes of carrying  
 26 out this chapter shall remain available until expended.

27 **§ 211108. Termination of authority**

28 The authority of the Administrator to make loans under the program  
 29 shall terminate on September 27, 2013.

30 **Division D—Microloan Program**  
 31 **Chapter 213—Microloan Program**

Sec.

213101. Definitions.

213102. Establishment of microloan program.

213103. Purposes of microloan program.

213104. Eligibility for participation.

213105. Loans to intermediaries; loans by intermediaries to small business concerns.

213106. Marketing, management, and technical assistance grants to intermediaries.

213107. Private sector borrowing technical assistance grants.

213108. Grants for management, marketing, technical assistance, and related services.

32 **§ 213101. Definitions**

33 In this chapter:

34 (1) INTERMEDIARY.—The term “intermediary” means—

35 (A) a private, nonprofit entity;



- 1 (B) a private, nonprofit community development corporation;  
2 (C) a consortium of private, nonprofit organizations or nonprofit  
3 community development corporations;  
4 (D) a quasi-governmental economic development entity (such as  
5 a planning and development district), other than a State, county,  
6 or municipal government (or any agency of a State, county, or  
7 municipal government), in a geographic area—  
8 (i) in which no application is received from an eligible non-  
9 profit organization; or  
10 (ii) with respect to which the Administrator determines  
11 that the needs of the geographic area are not adequately  
12 served by an existing, eligible nonprofit organization that has  
13 submitted an application; or  
14 (E) an agency of or nonprofit entity established by a Native  
15 American Tribal Government;  
16 that seeks to borrow or has borrowed funds from the Administrator to  
17 make microloans to small business concerns under the microloan pro-  
18 gram.  
19 (2) MICROLOAN.—The term “microloan” means a short-term, fixed  
20 rate loan of not more than \$50,000, made by an intermediary to a  
21 startup, newly established, or growing small business concern.  
22 (3) RURAL AREA.—The term “rural area” means a political subdivi-  
23 sion or unincorporated area—  
24 (A) in a nonmetropolitan county (as defined by the Secretary  
25 of Agriculture) or its equivalent; or  
26 (B) in a metropolitan county or its equivalent that has a resi-  
27 dent population of less than 20,000 if the Administrator deter-  
28 mines the political subdivision or unincorporated area to be rural.  
29 (4) STATE.—The term “State” includes the District of Columbia,  
30 Puerto Rico, the United States Virgin Islands, Guam, and American  
31 Samoa.

32 **§ 213102. Establishment of microloan program**

33 There is established within SBA a microloan program.

34 **§ 213103. Purposes of microloan program**

35 The purposes of the microloan program are—

- 36 (1) to assist women, low-income, veteran, and minority entrepreneurs  
37 and business owners and other such individuals possessing the capabil-  
38 ity to operate successful business concerns;  
39 (2) to assist small business concerns in areas suffering from a lack  
40 of credit due to economic downturns;

(3) to make loans to eligible intermediaries to enable the intermediaries to provide small-scale loans, particularly loans in amounts averaging not more than \$10,000, to startup, newly established, or growing small business concerns for working capital or the acquisition of materials, supplies, or equipment;

(4) to make grants to eligible intermediaries that, together with non-Federal matching funds, will enable the intermediaries to provide intensive marketing, management, and technical assistance to microloan borrowers;

(5) to make grants to eligible nonprofit entities that, together with non-Federal matching funds, will enable the entities to provide intensive marketing, management, and technical assistance to assist low-income entrepreneurs and other low-income individuals obtain private sector financing for their businesses, with or without loan guarantees;

(6) to report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on the effectiveness of the microloan program and the advisability and feasibility of implementing such a program nationwide; and

(7) to establish a welfare-to-work microloan initiative to test the feasibility of supplementing the technical assistance grants provided under sections 213106 and 213107 of this title to individuals who are receiving assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or under any comparable State-funded means-tested program of assistance for low-income individuals, to adequately assist those individuals in—

(A) establishing small business concerns; and

(B) eliminating their dependence on that assistance.

#### **§ 213104. Eligibility for participation**

An intermediary shall be eligible to receive loans and grants under sections 213105 and 213106 of this title if the intermediary has at least 1 year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of the microloan program, intensive marketing, management, and technical assistance to its borrowers.

#### **§ 213105. Loans to intermediaries; loans by intermediaries to small business concerns**

(a) IN GENERAL.—Under the microloan program, the Administrator may make direct loans to eligible intermediaries for the purpose of making microloans to small business concerns under this section.

(b) LOAN APPLICATIONS.—

(1) IN GENERAL.—As part of an application for a loan, an intermediary shall submit to the Administrator a description of—

(A) the type of businesses to be assisted;

(B) the size and range of loans to be made;

(C) the geographic area to be served, including a description of the economic, poverty, and unemployment characteristics of the area;

(D) the status of small business concerns in the area to be served, including an analysis of their credit and technical assistance needs;

(E) any marketing, management, and technical assistance to be provided in connection with a loan made under this chapter;

(F) the local economic credit markets, including the costs associated with obtaining credit locally;

(G) the qualifications of the applicant to carry out the purposes of the microloan program; and

(H) any plan to involve other technical assistance providers (such as counselors from SCORE or small business development centers) or private sector lenders in assisting selected business concerns.

(2) SELECTION OF INTERMEDIARIES.—In selecting intermediaries to participate in the microloan program, the Administrator shall give priority to applicants that provide loans in amounts averaging not more than \$10,000.

(c) INTERMEDIARY CONTRIBUTION.—

(1) IN GENERAL.—Subject to paragraph (2), as a condition of a loan under subsection (a), the Administrator shall require an intermediary to contribute not less than 15 percent of the loan amount in cash from a non-Federal source.

(2) WAIVER OF NON-FEDERAL SHARE.—

(A) IN GENERAL.—On request by an intermediary, and in accordance with this paragraph, the Administrator may waive, in whole or in part, the requirement to obtain non-Federal funds under paragraph (1) for a fiscal year. The Administrator may waive the requirement to obtain non-Federal funds under this paragraph for successive fiscal years.

(B) CONSIDERATIONS.—In determining whether to waive the requirement to obtain non-Federal funds under this paragraph, the Administrator shall consider—

(i) the economic conditions affecting the intermediary;

- 1 (ii) the impact that a waiver under this paragraph would  
2 have on the credibility of the microloan program;  
3 (iii) the demonstrated ability of the intermediary to raise  
4 non-Federal funds; and  
5 (iv) the performance of the intermediary.

6 (C) LIMITATIONS.—

7 (i) IN GENERAL.—The Administrator shall not waive the  
8 requirement to obtain non-Federal funds under this para-  
9 graph if granting the waiver would undermine the credibility  
10 of the microloan program.

11 (ii) SUNSET.—The Administrator shall not waive the re-  
12 quirement to obtain non-Federal funds under this paragraph  
13 for fiscal year 2013 or any fiscal year thereafter.

14 (D) REPEAL.—Effective October 1, 2012, this subsection is  
15 amended—

16 (i) by striking “INTERMEDIARY CONTRIBUTION.—” and all  
17 that follows through “Subject to paragraph (2), as” and in-  
18 serting “INTERMEDIARY CONTRIBUTION.—As”; and

19 (ii) by striking this paragraph.

20 (d) LOAN LIMITS.—A loan shall not be made under the microloan pro-  
21 gram if the total amount outstanding and committed (on a deferred basis,  
22 through a participation on an immediate basis, or directly) to 1 inter-  
23 mediary (excluding outstanding grants) under the general business loan pro-  
24 gram and microloan program would, as a result of the loan, exceed  
25 \$750,000 in the 1st year of the intermediary’s participation in the micro-  
26 loan program or \$5,000,000 in any subsequent year of the intermediary’s  
27 participation in the microloan program.

28 (e) LOAN TERM.—A loan made by the Administrator under this chapter  
29 shall be for a term of 10 years.

30 (f) DELAYED PAYMENTS.—Except for a loan loss reserve fund under sub-  
31 section (i), the Administrator shall not require repayment of principal or in-  
32 terest on a loan made to an intermediary under this chapter during the 1st  
33 year of the loan.

34 (g) NO FEE OR COLLATERAL.—Except for a loan loss reserve fund under  
35 subsection (i), the Administrator shall not charge any fee or require collat-  
36 eral other than an assignment of the notes receivable of the microloans with  
37 respect to any loan made to an intermediary under the microloan program.

38 (h) INTEREST RATES.—

39 (1) IN GENERAL.—Except as provided in paragraph (2), a loan made  
40 by the Administrator to an intermediary under this chapter shall bear  
41 an interest rate equal to 1.25 percentage points below the rate deter-

1       mined by the Secretary of the Treasury for obligations of the United  
2       States with a period of maturity of 5 years, adjusted to the nearest  
3       0.125 percent.

4       (2) RATES APPLICABLE TO CERTAIN SMALL LOANS.—A loan made  
5       by the Administrator to an intermediary that makes loans to small  
6       business concerns and entrepreneurs averaging not more than \$7,500  
7       shall bear an interest rate that is 2 percentage points below the rate  
8       determined by the Secretary of the Treasury for obligations of the  
9       United States with a period of maturity of 5 years, adjusted to the  
10      nearest 0.125 percent.

11      (3) MULTIPLE SITES OR OFFICES.—The interest rate determined  
12      under paragraph (1) or (2) shall apply to each separate loanmaking  
13      site or office of an intermediary only if the site or office meets the re-  
14      quirements of that paragraph.

15      (4) RATE BASIS.—The applicable rate of interest under this sub-  
16      section—

17          (A) for the 1st year of an intermediary's participation in the  
18          microloan program, shall be applied retroactively based on the ac-  
19          tual lending practices of the intermediary as determined by the  
20          Administrator before the end of that year; and

21          (B) for each subsequent year of an intermediary's participation  
22          in the microloan program, shall be based on the actual lending  
23          practices of the intermediary during the term of the intermediary's  
24          participation in the microloan program.

25      (i) LOSS RESERVE OF INTERMEDIARIES.—

26          (1) IN GENERAL.—The Administrator shall by regulation require an  
27          intermediary to establish and maintain a loan loss reserve fund until  
28          all obligations owed to the Administrator under the microloan program  
29          are repaid.

30          (2) LEVEL OF LOAN LOSS RESERVE FUND.—

31              (A) IN GENERAL.—Subject to subparagraph (C), the Adminis-  
32              trator shall require the loan loss reserve fund of an intermediary  
33              to be maintained at a level equal to 15 percent of the outstanding  
34              balance of the notes receivable owed to the intermediary.

35              (B) REVIEW OF LOAN LOSS RESERVE.—

36                  (i) IN GENERAL.—After the initial 5 years of an  
37                  intermediary's participation in the microloan program, the  
38                  Administrator shall, at the request of the intermediary, con-  
39                  duct a review of the annual loss rate of the intermediary.

1 (ii) REVIEW PERIOD.—An intermediary that requests a re-  
2 duction in its loan loss reserve shall be reviewed based on the  
3 most recent 5-year period preceding the request.

4 (C) REDUCTION OF LOAN LOSS RESERVE.—Subject to subpara-  
5 graph (D), the Administrator may reduce the annual loan loss re-  
6 serve requirement of an intermediary to reflect the actual average  
7 loan loss rate for the intermediary during the preceding 5-year pe-  
8 riod, except that in no case shall the loan loss reserve be reduced  
9 to less than 10 percent of the outstanding balance of the notes  
10 receivable owed to the intermediary.

11 (D) REQUIREMENTS.—The Administrator may reduce the an-  
12 nual loan loss reserve requirement of an intermediary only if the  
13 intermediary demonstrates to the satisfaction of the Administrator  
14 that—

15 (i) the average annual loss rate for the intermediary during  
16 the preceding 5-year period is less than 15 percent; and

17 (ii) no other factors exist that may impair the ability of the  
18 intermediary to repay all obligations owed to the Adminis-  
19 trator under this chapter.

20 (j) LOANS BY INTERMEDIARIES TO SMALL BUSINESS CONCERNS.—

21 (1) IN GENERAL.—From funds made available to an intermediary  
22 under the microloan program, the intermediary shall make short-term,  
23 fixed rate loans to startup, newly established, and growing small busi-  
24 ness concerns for working capital and the acquisition of materials, sup-  
25 plies, furniture, fixtures, and equipment.

26 (2) LOAN AMOUNT.—

27 (A) PORTFOLIO REQUIREMENT.—To the extent practicable, an  
28 intermediary that operates under the microloan program shall  
29 maintain a microloan portfolio with an average loan size of not  
30 more than \$15,000.

31 (B) UNAVAILABILITY OF COMPARABLE CREDIT.—An inter-  
32 mediary may make a loan under the microloan program of more  
33 than \$20,000 to a small business concern only if the small busi-  
34 ness concern demonstrates that—

35 (i) it is unable to obtain credit elsewhere at comparable in-  
36 terest rates; and

37 (ii) it has good prospects for success.

38 (C) MAXIMUM AMOUNT.—An intermediary shall not—

39 (i) make a loan under this chapter of more than \$50,000;  
40 or

1 (ii) have outstanding or committed to any 1 borrower more  
2 than \$50,000.

3 (3) INTEREST LIMIT.—Notwithstanding any provision of law of any  
4 State (including the constitution of a State) pertaining to the rate or  
5 amount of interest that may be charged, taken, received, or reserved  
6 on a loan, the maximum rate of interest to be charged on a microloan  
7 funded under this chapter shall not exceed the rate of interest applica-  
8 ble to a loan made to an intermediary by the Administrator—

9 (A) in the case of a loan of more than \$7,500 made by the  
10 intermediary to a small business concern or entrepreneur, by more  
11 than 7.75 percentage points; and

12 (B) in the case of a loan of not more than \$7,500 made by the  
13 intermediary to a small business concern or entrepreneur by more  
14 than 8.5 percentage points.

15 (4) REVIEW RESTRICTION.—The Administrator shall not review indi-  
16 vidual microloans made by intermediaries prior to approval.

17 (5) ESTABLISHMENT OF CHILD CARE OR TRANSPORTATION BUSI-  
18 NESSES.—In addition to other eligible small business concerns, a bor-  
19 rower under the microloan program may include an individual who will  
20 use the loan proceeds to establish—

21 (A) a for-profit or nonprofit child care establishment; or

22 (B) a business providing a for-profit transportation service.

23 (k) PROGRAM FUNDING FOR MICROLOANS.—

24 (1) NUMBER OF PARTICIPANTS.—Under the microloan program, the  
25 Administrator may fund, on a competitive basis, not more than 300  
26 intermediaries.

27 (2) ALLOCATION.—

28 (A) MINIMUM ALLOCATION.—Subject to the availability of ap-  
29 propriations, of the total amount of new loan funds made available  
30 for award under the microloan program for each fiscal year, the  
31 Administrator shall make available for award in each State an  
32 amount equal to the sum of—

33 (i) the lesser of—

34 (I) \$800,000; or

35 (II)  $\frac{1}{55}$  of the total amount of new loan funds made  
36 available for award under the microloan program for  
37 that fiscal year; and

38 (ii) any additional amount, as determined by the Adminis-  
39 trator.

40 (B) REDISTRIBUTION.—If, at the beginning of the 3d quarter  
41 of a fiscal year, the Administrator determines that any portion of

1           the amount made available to carry out the microloan program is  
2           unlikely to be made available under subparagraph (A) during that  
3           fiscal year, the Administrator may make that portion available for  
4           award in any 1 or more States without regard to subparagraph  
5           (A).

6           (1) **EQUITABLE DISTRIBUTION OF INTERMEDIARIES.**—In approving  
7           microloan program applicants and providing funding to intermediaries  
8           under the microloan program, the Administrator shall select and provide  
9           funding to such intermediaries as will ensure appropriate availability of  
10          loans for small business concerns in all industries located throughout each  
11          State, particularly industries located in urban areas and industries located  
12          in rural areas.

13       **§ 213106. Marketing, management, and technical assistance**  
14       **grants to intermediaries**

15          (a) **IN GENERAL.**—In conjunction with a loan to an intermediary under  
16          section 213105 of this title, the Administrator may make a grant to the eli-  
17          gible intermediary for the purpose of providing intensive marketing, man-  
18          agement, and technical assistance to small business concerns that are bor-  
19          rowers under the microloan program.

20          (b) **GRANT AMOUNT.**—

21               (1) **IN GENERAL.**—An intermediary that receives a loan under sec-  
22               tion 213105 of this title shall be eligible to receive a grant in an  
23               amount equal to not more than 25 percent of the total outstanding bal-  
24               ance of loans made to the intermediary under the microloan program.

25               (2) **INTERMEDIARY CONTRIBUTION.**—

26                   (A) **IN GENERAL.**—Subject to subparagraph (C), as a condition  
27                   of a grant under paragraph (1), the Administrator shall require  
28                   the intermediary to contribute an amount equal to 25 percent of  
29                   the amount of the grant, obtained solely from a non-Federal  
30                   source.

31                   (B) **FORM.**—In addition to cash or other direct funding, a con-  
32                   tribution under subparagraph (A) may include indirect costs or in-  
33                   kind contributions paid for under a non-Federal program.

34                   (C) **WAIVER OF NON-FEDERAL SHARE.**—

35                       (i) **IN GENERAL.**—On request by an intermediary, and in  
36                       accordance with this subparagraph, the Administrator may  
37                       waive, in whole or in part, the requirement to obtain non-  
38                       Federal funds under subparagraph (A) for a fiscal year. The  
39                       Administrator may waive the requirement to obtain non-Fed-  
40                       eral funds under this paragraph for successive fiscal years.



(ii) CONSIDERATIONS.—In determining whether to waive the requirement to obtain non-Federal funds under this paragraph, the Administrator shall consider—

(I) the economic conditions affecting the intermediary;

(II) the impact that a waiver under this subparagraph would have on the credibility of the microloan program under this subsection;

(III) the demonstrated ability of the intermediary to raise non-Federal funds; and

(IV) the performance of the intermediary.

(iii) LIMITATIONS.—

(I) IN GENERAL.—The Administrator shall not waive the requirement to obtain non-Federal funds under this subparagraph if granting the waiver would undermine the credibility of the microloan program.

(II) SUNSET.—The Administrator shall not waive the requirement to obtain non-Federal funds under this subparagraph for fiscal year 2013 or any fiscal year thereafter.

(iv) REPEAL.—Effective October 1, 2012, this paragraph is amended—

(I) in subparagraph (A), by striking “Subject to subparagraph (C), as” and inserting “As”; and

(II) by striking this subparagraph.

(c) ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN LOANS.—

(1) IN GENERAL.—An intermediary that has a portfolio of loans under the microloan program that averages not more than \$10,000 during the period of the intermediary’s participation in the microloan program shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under the microloan program, in addition to any grant made under subsection (b).

(2) USE.—A grant under paragraph (1) shall be used to provide marketing, management, and technical assistance to small business concerns that are borrowers under the microloan program.

(d) MULTIPLE SITES OR OFFICES.—Eligibility for a grant under subsection (b) or (c) shall be determined separately for each loanmaking site or office of an intermediary.

(e) ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.—

1 (1) IN GENERAL.—An intermediary may expend an amount not to  
2 exceed 25 percent of the funds received under subsection (a) to provide  
3 information and technical assistance to small business concerns that  
4 are prospective borrowers under section 213108 of this title.

5 (2) TECHNICAL ASSISTANCE.—An intermediary may provide tech-  
6 nical assistance under paragraph (1) through a 3d party contract.

7 **§ 213107. Private sector borrowing technical assistance**  
8 **grants**

9 (a) IN GENERAL.—The Administrator may make grants to nonprofit enti-  
10 ties for the purpose of providing marketing, management, and technical as-  
11 sistance to low-income individuals seeking to start or enlarge their own busi-  
12 nesses, if the assistance includes working with the grant recipient to secure  
13 loans in amounts not to exceed \$50,000 from private sector lending institu-  
14 tions, with or without a loan guarantee from the nonprofit entity.

15 (b) GRANT AMOUNTS.—The Administrator may make not more than 55  
16 grants annually under subsection (a), each in an amount not to exceed  
17 \$200,000.

18 (c) GRANT RECIPIENT CONTRIBUTION.—

19 (1) IN GENERAL.—As a condition of a grant under subsection (a),  
20 the Administrator shall require the grant recipient to contribute an  
21 amount equal to 20 percent of the amount of the grant, obtained solely  
22 from a non-Federal source.

23 (2) FORM.—In addition to cash or other direct funding, a contribu-  
24 tion under paragraph (1) may include indirect costs or in-kind con-  
25 tributions paid for under a non-Federal program.

26 **§ 213108. Grants for management, marketing, technical as-**  
27 **sistance, and related services**

28 (a) IN GENERAL.—The Administrator may procure technical assistance  
29 for intermediaries participating in the microloan program to ensure that the  
30 intermediaries have the knowledge, skills, and understanding of micro-  
31 lending practices necessary to operate a successful microloan program.

32 (b) ASSISTANCE AMOUNT.—The Administrator shall transfer 7 percent of  
33 the annual appropriation for loans and loan guarantees under this chapter  
34 to SBA's Salaries and Expense Account for the specific purpose of provid-  
35 ing 1 or more technical assistance grants to experienced microlending orga-  
36 nizations and national and regional nonprofit organizations that have dem-  
37 onstrated experience in providing training support for microenterprise devel-  
38 opment and financing to achieve the purpose specified in subsection (a).

39 (c) WELFARE-TO-WORK MICROLOAN INITIATIVE.—Of amounts made  
40 available to carry out the welfare-to-work microloan initiative under section  
41 213103(7) of this title for any fiscal year, the Administrator may use not

1 more than 5 percent to provide technical assistance, either directly or  
 2 through contractors, to welfare-to-work microloan initiative grantees, to en-  
 3 sure that the grantees have the knowledge, skills, and understanding of  
 4 microlending and welfare-to-work transition, and other related issues, to op-  
 5 erate a successful welfare-to-work microloan initiative.

6 **Division E—Disaster Assistance Programs**  
 7 **Chapter 221—Disaster Loan Program**

Sec.

- 221101. Physical loss disaster loans.
- 221102. Economic injury disaster loans.
- 221103. Loans to assist small business concerns that suffer injury as a result of an essential employee's being ordered to active military duty.
- 221104. Public awareness of disaster declaration and application periods.
- 221105. Disaster loan processing.
- 221106. Disaster assistance employees.
- 221107. Maximum loan amount.
- 221108. Additional disaster assistance in cases of extraordinary disaster.
- 221109. Interest rates.
- 221110. Maximum term.
- 221111. Deferment of repayment.
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- 221113. Participation in loans on deferred basis.
- 221114. Assistance and counseling for disaster victims.
- 221115. Priority in allocating funds.
- 221116. Prohibition of cancellation of certain disaster loans.
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- 221119. Disaster planning responsibilities.
- 221120. Disaster response plan.
- 221121. Coordination of disaster assistance programs with FEMA.
- 221122. Plans to secure sufficient office space.
- 221123. Bond guarantees in procurements relating to a major disaster.
- 221124. Civil penalty.

8 **§ 221101. Physical loss disaster loans**

9 (a) IN GENERAL.—Except as to agricultural enterprises, to the extent  
 10 and in such amounts as are provided in advance in appropriation Acts, the  
 11 Administrator may make such a loan (directly or in cooperation with a bank  
 12 or other lending institution through an agreement to participate on an im-  
 13 mediate or deferred (guaranteed) basis) as the Administrator determines to  
 14 be necessary or appropriate to repair, rehabilitate, or replace property, real  
 15 or personal, damaged or destroyed by or as a result of a natural or other  
 16 disaster.

17 (b) LOAN AMOUNT.—

18 (1) IN GENERAL.—The amount of a loan under subsection (a) shall  
 19 be equal to 100 percent of the amount of the loss, minus any amount  
 20 compensated for by insurance or otherwise.

21 (2) PROTECTION FROM FUTURE DISASTERS.—The Administrator  
 22 may increase the amount of a loan under subsection (a) by up to 20  
 23 percent of the aggregate costs of the damage or destruction (whether  
 24 or not compensated for by insurance or otherwise) if the Administrator

determines the increase to be necessary or appropriate to protect the damaged or destroyed property from future disasters by taking mitigating measures, including construction of retaining walls and sea walls, grading and contouring land, relocating utilities, and modifying structures.

(3) LIMITATION ON LOAN AMOUNT.—

(A) IN GENERAL.—No loan under this section shall be made if the total amount outstanding and committed to the borrower under the disaster loan program would exceed \$1,500,000 for any 1 disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administrator may waive the \$1,500,000 limitation.

(B) MAJOR SOURCE OF EMPLOYMENT.—For purposes of determining whether a nonprofit applicant that owns a premises constitutes a major source of employment under subparagraph (A), the employees of 2 or more concerns that share the premises as a common business premises shall be aggregated.

(4) LIMITATION ON REDUCTION OF LOAN AMOUNT.—

(A) IN GENERAL.—The Administrator shall not reduce the amount of a loan—

(i) for any homeowner on account of loss of real estate to less than \$100,000 for any 1 disaster; or

(ii) for any homeowner or lessee on account of loss of personal property to less than \$20,000 for any 1 disaster.

(B) REFINANCING.—The \$100,000 and \$20,000 amounts in subparagraph (A) are in addition to any refinancing for which a loan applicant is eligible.

(c) REFINANCINGS.—

(1) IN GENERAL.—A loan or guarantee may be made to refinance a mortgage or other lien against a totally destroyed or substantially damaged home or business concern (other than an agricultural enterprise).

(2) REQUIREMENTS.—A loan or guarantee under paragraph (1) shall not be made unless the Administrator determines that—

(A) the applicant is not able to obtain credit elsewhere; and

(B) the property is to be repaired, rehabilitated, or replaced.

(3) AMOUNT.—The amount refinanced under paragraph (1)—

(A) shall not exceed the amount of physical loss sustained; and

(B) shall be reduced to the extent that the mortgage or lien is satisfied by insurance or otherwise.

(d) COLLATERAL.—The Administrator shall not require collateral for a loan of \$14,000 (or such greater amount as the Administrator determines to be appropriate in the event of a major disaster) or less that is made under this section.

**§ 221102. Economic injury disaster loans**

(a) DEFINITIONS.—In this section:

(1) DISASTER.—The term “disaster” includes—

(A) a drought;

(B) a below average water level in 1 or more of the Great Lakes or on any other body of water in the United States that supports commerce by small business concerns; and

(C) an ice storm or blizzard.

(2) DISASTER AREA.—The term “disaster area” includes—

(A) a county determined to be a disaster by the President, the Secretary of Agriculture, or the Administrator; and

(B) a county contiguous to a county described in subparagraph (A).

(b) LOANS.—Except as to agricultural enterprises other than businesses engaged in aquaculture, to the extent and in such amounts as are provided in advance in appropriation Acts, the Administrator may make such a loan (directly or in cooperation with a bank or other lending institution through an agreement to participate on an immediate or deferred (guaranteed) basis) as the Administrator determines to be necessary or appropriate to a farm-related or nonfarm-related small business concern, private nonprofit organization, or small agricultural cooperative located in a disaster area if—

(1) the Administrator determines that the small business concern, private nonprofit organization, or agricultural cooperative has suffered a substantial economic injury as a result of the disaster;

(2)(A) the disaster constitutes—

(i) a major disaster;

(ii) a natural disaster, as determined by the Secretary of Agriculture under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961), in which case, assistance under this section may be provided to farm-related and nonfarm-related small business concerns, subject to the other applicable requirements of this section; or

(iii) a disaster, as determined by the Administrator; or

(B) if no disaster described in subparagraph (A) is declared, the Governor of a State in which a disaster has occurred certifies to the Administrator that small business concerns, private nonprofits organizations, or small agricultural cooperatives—

1 (i) have suffered economic injury as a result of the disaster; and  
2 (ii) are in need of financial assistance that is not available on  
3 reasonable terms in the disaster area; and

4 (3) the Administrator determines that the applicant is not able to  
5 obtain credit elsewhere.

6 (c) PROMPT RESPONSE TO CERTIFICATION.—Not later than 30 days  
7 after the date of receipt of a certification by a Governor of a State under  
8 subsection (b)(2)(B), the Administrator shall respond in writing to the Gov-  
9 ernor on the Administrator's determination regarding the certification, stat-  
10 ing the reasons for the determination.

11 (d) LIMITATION ON LOAN AMOUNT.—

12 (1) IN GENERAL.—No loan under this section shall be made if the  
13 total amount outstanding and committed to a borrower under the dis-  
14 aster loan program would exceed \$1,500,000 for any 1 disaster unless  
15 the borrower constitutes a major source of employment in a disaster  
16 area, in which case the Administrator may waive the \$1,500,000 limi-  
17 tation.

18 (2) MAJOR SOURCE OF EMPLOYMENT.—For purposes of determining  
19 whether a nonprofit applicant that owns a premises constitutes a major  
20 source of employment under paragraph (1), the employees of 2 or more  
21 concerns that share the premises as a common business premises shall  
22 be aggregated.

23 (e) NURSERIES.—The Administrator shall not withhold disaster assist-  
24 ance under this section to a nursery that is a victim of a drought disaster.

25 **§ 221103. Loans to assist small business concerns that suffer**  
26 **injury as a result of an essential employee's being**  
27 **ordered to active military duty**

28 (a) DEFINITIONS.—In this section:

29 (1) ESSENTIAL EMPLOYEE.—The term “essential employee” means  
30 an individual who is employed by a small business concern and whose  
31 managerial or technical expertise is critical to the successful day-to-day  
32 operations of the small business concern.

33 (2) PERIOD OF MILITARY CONFLICT.—The term “period of military  
34 conflict” has the meaning given the term in section 201104(a) of this  
35 title.

36 (3) RESERVIST EXPECTING ACTIVATION.—The term “reservist ex-  
37 pecting activation” means a reservist who—

38 (A) has not been ordered to active duty;

39 (B) expects to be ordered to active duty during a period of mili-  
40 tary conflict; and

1 (C) is a key employee of a small business concern that can rea-  
2 sonably demonstrate that the small business concern will suffer  
3 economic injury in the absence of the reservist.

4 (4) SUBSTANTIAL ECONOMIC INJURY.—The term “substantial eco-  
5 nomic injury” means an economic harm to a small business concern  
6 that results in the inability of the small business concern to—

7 (A) meet its obligations as they mature;

8 (B) pay its ordinary and necessary operating expenses; or

9 (C) market, produce, or provide a product or service ordinarily  
10 marketed, produced, or provided by the small business concern.

11 (b) IN GENERAL.—Except as to agricultural enterprises, to the extent  
12 and in such amounts as are provided in advance in appropriation Acts, the  
13 Administrator may make a loan (directly or in cooperation with a bank or  
14 other lending institution through an agreement to participate on an imme-  
15 diate or deferred basis) to assist a small business concern that has suffered  
16 or that is likely to suffer substantial economic injury as the result of an  
17 essential employee of the small business concern’s being ordered to active  
18 military duty during a period of military conflict.

19 (c) ELIGIBILITY PERIOD.—

20 (1) IN GENERAL.—A small business concern shall be eligible for as-  
21 sistance under this section during the period beginning on the date on  
22 which an essential employee is ordered to active duty and ending on  
23 the date that is 1 year after the date on which the essential employee  
24 is discharged or released from active duty.

25 (2) EXTENSION.—The Administrator may, when appropriate (as de-  
26 termined by the Administrator), extend the ending date specified in  
27 paragraph (1) by not more than 1 year.

28 (d) INTEREST RATE.—A loan or guarantee made under this section shall  
29 be made at the same interest rate as in the case of an economic injury loan  
30 under section 221102 of this title.

31 (e) LOAN AMOUNT.—

32 (1) IN GENERAL.—Except as provided in paragraph (2), no loan may  
33 be made under this section if the total amount outstanding and com-  
34 mitted to the borrower under the disaster loan program would exceed  
35 \$1,500,000.

36 (2) MAJOR SOURCE OF EMPLOYMENT.—If the Administrator deter-  
37 mines that the applicant constitutes a major source of employment in  
38 its surrounding area (including a borrower that was not a major source  
39 of employment before the disaster but became a major source of em-  
40 ployment after the disaster), as determined by the Administrator, the

1 Administrator may waive the \$1,500,000 limitation under paragraph  
2 (1).

3 (f) PRECONSIDERATION PROCESS.—The Administrator shall establish a  
4 preconsideration process under which the Administrator—

5 (1) may collect all relevant materials necessary for processing a loan  
6 to a small business concern under this section before a reservist expect-  
7 ing activation who is employed by the small business concern is acti-  
8 vated; and

9 (2) shall distribute funds for any loan approved under paragraph (1)  
10 if the reservist expecting activation is activated.

11 (g) OUTREACH AND TECHNICAL ASSISTANCE PROGRAM.—

12 (1) IN GENERAL.—The Administrator, in consultation with the Sec-  
13 retary of Veterans Affairs and the Secretary of Defense, may develop  
14 a comprehensive outreach and technical assistance program (referred to  
15 in this subsection as the “program”) to—

16 (A) market the loans available under this section to reservists  
17 and family members of reservists (including both reservists that  
18 are on active duty and reservists that are not on active duty); and

19 (B) provide technical assistance to a small business concern ap-  
20 plying for a loan under this section.

21 (2) COMPONENTS.—The program shall—

22 (A) incorporate appropriate websites maintained by SBA, the  
23 Department of Veterans Affairs, and the Department of Defense;  
24 and

25 (B) require that information on the program be made available  
26 to small business concerns directly through—

27 (i) the district offices and resource partners of SBA, in-  
28 cluding small business development centers, women’s business  
29 centers, and the SCORE; and

30 (ii) the Department of Veterans Affairs, the Department of  
31 Defense, and other Federal agencies.

32 (3) REPORT.—

33 (A) IN GENERAL.—The Administrator shall submit to Congress  
34 a biannual report on the status of the program.

35 (B) CONTENTS.—A report under subparagraph (A) shall in-  
36 clude—

37 (i) for the 6-month period ending on the date of the re-  
38 port—

39 (I) the number of loans approved under this section;

40 (II) the number of loans disbursed under this section;

41 and



1 (III) the total amount disbursed under this section;  
2 and

3 (ii) recommendations, if any, to make the program more ef-  
4 fective in serving small business concerns that employ reserv-  
5 ists.

6 (C) REPEAL.—This paragraph is repealed effective February  
7 14, 2011.

8 (h) NONCOLLATERALIZED LOANS.—

9 (1) IN GENERAL.—Notwithstanding any other provision of law, the  
10 Administrator may make a loan under this section of not more than  
11 \$50,000 without collateral.

12 (2) DEFERRAL OF PAYMENT.—The Administrator may defer pay-  
13 ment of principal and interest on a loan described in paragraph (1)  
14 during the longer of—

15 (A) the 1-year period beginning on the date of the initial dis-  
16 bursement of the loan; or

17 (B) the period during which the essential employee is on active  
18 duty.

19 (i) PRIORITY.—The Administrator shall—

20 (1) give priority to any application for a loan under this section; and

21 (2) process and make a determination regarding applications under  
22 this section prior to processing or making a determination on other  
23 loan applications under the disaster loan program, on a rolling basis.

24 **§ 221104. Public awareness of disaster declaration and ap-**  
25 **plication periods**

26 (a) COORDINATION WITH FEMA.—

27 (1) IN GENERAL.—Notwithstanding any other provision of law, for  
28 any disaster declared under this chapter or major disaster (including  
29 any major disaster relating to which the Administrator declares eligi-  
30 bility for additional disaster assistance under section 221108 of this  
31 title), the Administrator, in consultation with the Administrator of the  
32 Federal Emergency Management Agency, shall ensure, to the maxi-  
33 mum extent practicable, that all application periods for disaster relief  
34 under this subtitle correspond with application deadlines established  
35 under the Robert T. Stafford Disaster Relief and Emergency Assist-  
36 ance Act (42 U.S.C. 5121 et seq.), or as extended by the President.

37 (2) DEADLINES.—Notwithstanding any other provision of law, not  
38 later than 10 days before the closing date of an application period for  
39 a major disaster (including any major disaster relating to which the  
40 Administrator declares eligibility for additional disaster assistance  
41 under section 221108 of this title), the Administrator, in consultation

1 with the Administrator of the Federal Emergency Management Agency,  
2 shall submit to the Committee on Small Business and Entrepreneur-  
3 ship of the Senate and the Committee on Small Business of the House  
4 of Representatives a report that includes—

5 (A) the deadline for submitting applications for assistance under  
6 this subtitle relating to the major disaster;

7 (B) information regarding the number of loan applications and  
8 disbursements processed by the Administrator relating to the  
9 major disaster for each day during the period beginning on the  
10 date on which the major disaster was declared and ending on the  
11 date of the report; and

12 (C) an estimate of the number of potential applicants that have  
13 not submitted an application relating to the major disaster.

14 (b) PUBLIC AWARENESS OF DISASTERS.—If a disaster is declared under  
15 this chapter or the Administrator declares eligibility for additional disaster  
16 assistance under section 221108 of this title, the Administrator shall make  
17 every effort to communicate through radio, television, print, and web-based  
18 outlets all relevant information needed by disaster loan applicants, includ-  
19 ing—

20 (1) the date of the declaration;

21 (2) the names of cities and towns within the disaster area;

22 (3) loan application deadlines related to the disaster;

23 (4) all relevant contact information for victim services available  
24 through the Administrator (including links to small business develop-  
25 ment center websites);

26 (5) links to relevant Federal and State disaster assistance websites,  
27 including links to websites providing information regarding assistance  
28 available from the Federal Emergency Management Agency;

29 (6) information on eligibility criteria for the disaster assistance pro-  
30 grams, including where loan applications can be found; and

31 (7) loan application materials that clearly state the function of SBA  
32 as the Federal source of disaster loans for homeowners and renters.

33 (c) MARKETING AND OUTREACH.—The Administrator shall create a mar-  
34 keting and outreach plan that—

35 (1) encourages a proactive approach to the disaster relief efforts of  
36 the Administrator;

37 (2) makes clear the services provided by the Administrator, including  
38 contact information, application information, and timelines for submit-  
39 ting applications, the review of applications, and the disbursement of  
40 funds;

(3) describes each of the disaster assistance programs, including how each disaster assistance program is made available and the eligibility requirements for each disaster assistance program;

(4) provides for regional marketing, focusing on disasters occurring in each SBA region before June 18, 2008, and likely scenarios for disasters in each SBA region; and

(5) ensures that the marketing plan is made available at small business development centers and on the SBA website.

**§ 221105. Disaster loan processing**

(a) MAJOR DISASTER LOAN PROCESSING AND LOSS VERIFICATION BY QUALIFIED PRIVATE CONTRACTORS.—

(1) MAJOR DISASTER LOAN PROCESSING.—The Administrator may enter into an agreement with a qualified private contractor, as determined by the Administrator, to process loans under this chapter in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 221108 of this title), under which the Administrator shall pay the contractor a fee for each loan processed.

(2) LOAN LOSS VERIFICATION.—The Administrator may enter into an agreement with a qualified lender or loss verification professional, as determined by the Administrator, to verify losses for loans under this chapter in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 221108 of this title), under which the Administrator shall pay the lender or verification professional a fee for each loan for which the lender or verification professional verifies a loss.

(b) COORDINATION OF EFFORTS BETWEEN THE ADMINISTRATOR AND THE COMMISSIONER OF INTERNAL REVENUE TO EXPEDITE LOAN PROCESSING.—The Administrator and the Commissioner of Internal Revenue shall, to the maximum extent practicable, ensure that all relevant and allowable tax records for loan approval are shared with loan processors in an expedited manner on request by the Administrator.

(c) INFORMATION TRACKING AND FOLLOWUP SYSTEM.—

(1) INFORMATION TRACKING.—

(A) IN GENERAL.—The Administrator shall develop, implement, and maintain a centralized information system to track communications between SBA personnel and applicants for disaster assistance.

(B) INFORMATION TO BE RECORDED.—The information system shall ensure that when an applicant for disaster assistance com-

1            communicates with SBA personnel on a matter relating to the applica-  
2            tion, the following information is recorded:

- 3                    (i) The method of communication.  
4                    (ii) The date of the communication.  
5                    (iii) The identity of the SBA personnel.  
6                    (iv) A summary of the subject matter of the communica-  
7                    tion.

8            (2) FOLLOWUP.—The Administrator shall ensure that an applicant  
9            for disaster assistance receives, by telephone, mail, or electronic mail,  
10           followup communications from SBA personnel at all critical stages of  
11           the application process, including the following:

12                    (A) When SBA personnel determine that additional information  
13                    or documentation is required to process the application.

14                    (B) When SBA personnel determine whether to approve or deny  
15                    the disaster assistance.

16                    (C) When the primary contact person managing the application  
17                    for disaster assistance has changed.

18            (d) DISASTER ASSISTANCE PROCESSING REDUNDANCY.—The Adminis-  
19            trator shall ensure that SBA has in place a facility for disaster assistance  
20            processing that, when SBA's primary facility for disaster loan processing  
21            becomes unavailable, is able to take over all disaster loan processing from  
22            the primary facility within 2 days.

23            **§ 221106. Disaster assistance employees**

24            (a) IN GENERAL.—In carrying out the disaster assistance programs, the  
25            Administrator may, where practicable, ensure that the number of full-time  
26            equivalent employees—

27                    (1) in the Office of the Disaster Assistance is not fewer than 800;  
28                    and

29                    (2) in the Disaster Cadre of SBA is not fewer than 1,000.

30            (b) REPORT.—In carrying out the disaster assistance programs, if the  
31            number of full-time employees for the Office of Disaster Assistance or the  
32            Disaster Cadre of SBA is below the level required by subsection (a) for that  
33            office, not later than 21 days after the date on which the staffing level de-  
34            creases below the level required by subsection (a), the Administrator shall  
35            submit to the Committee on Appropriations and Committee on Small Busi-  
36            ness and Entrepreneurship of the Senate and the Committee on Appropria-  
37            tions and Committee on Small Business of the House of Representatives a  
38            report that—

39                    (1) details staffing levels on that date;

40                    (2) requests, if practicable and determined to be appropriate by the  
41            Administrator, additional funds for additional employees; and

1 (3) contains such additional information as the Administrator deter-  
2 mines to be appropriate.

3 **§ 221107. Maximum loan amount**

4 (a) AGGREGATE LOAN AMOUNTS.—Except as provided in subsection (b),  
5 and notwithstanding any other provision of law, the aggregate loan amount  
6 outstanding and committed to a borrower under the disaster loan program  
7 shall not exceed \$2,000,000.

8 (b) WAIVER.—The Administrator may increase the aggregate loan  
9 amount under subsection (a) for loans relating to a disaster to a level estab-  
10 lished by the Administrator based on appropriate economic indicators for  
11 the region in which the disaster occurred.

12 **§ 221108. Additional disaster assistance in cases of extraor-**  
13 **dinary disaster**

14 (a) DEFINITION OF ELIGIBLE SMALL BUSINESS CONCERN.—In this sec-  
15 tion, the term “eligible small business concern” means a small business con-  
16 cern—

17 (1) that has suffered extraordinary disaster-related substantial eco-  
18 nomic injury as a result of an extraordinary disaster; and

19 (2)(A) for which not less than 25 percent of the market share of the  
20 small business concern is from business transacted in the extraordinary  
21 disaster area;

22 (B) for which not less than 25 percent of an input into a production  
23 process of the small business concern is from the extraordinary disaster  
24 area; or

25 (C) that relies on a provider located in the extraordinary disaster  
26 area for a service that is not readily available elsewhere.

27 (b) DECLARATION OF EXTRAORDINARY DISASTER.—If the President de-  
28 clares a major disaster, the Administrator may declare that the major disas-  
29 ter constitutes an extraordinary disaster if the major disaster—

30 (1) results in—

31 (A) extraordinary levels of casualties or damage; or

32 (B) disruption severely affecting the population (including a  
33 mass evacuation), the infrastructure, the environment, the econ-  
34 omy, national morale, or government functions in an area;

35 (2) is comparable to a catastrophic incident described in the Admin-  
36 istrator’s national response plan (including any successor to the na-  
37 tional response plan), unless the national response plan expires and  
38 there is no successor to the plan, in which case this paragraph shall  
39 be of no effect; and

40 (3) is of such size and scope that—

1 (A) the disaster loan program is incapable of providing adequate  
2 and timely assistance to individuals or business concerns located  
3 within the major disaster area; or

4 (B) a significant number of business concerns outside the major  
5 disaster area have suffered major disaster-related substantial eco-  
6 nomic injury as a result of the major disaster.

7 (c) ADDITIONAL ECONOMIC INJURY DISASTER LOAN ASSISTANCE.—

8 (1) IN GENERAL.—If the Administrator declares an extraordinary  
9 disaster, the Administrator may make such loans (directly or in co-  
10 operation with a bank or other institution through an agreement to  
11 participate on an immediate or deferred basis) as the Administrator de-  
12 termines to be appropriate to eligible small business concerns located  
13 anywhere in the United States.

14 (2) PROCESSING TIME.—

15 (A) IN GENERAL.—If the Administrator determines that the av-  
16 erage processing time for applications for disaster loans under this  
17 subsection relating to a specific major disaster is more than 15  
18 days, the Administrator shall give priority to the processing of  
19 such applications submitted by eligible small business concerns lo-  
20 cated inside the major disaster area until the Administrator deter-  
21 mines that the average processing time for such applications is not  
22 more than 15 days.

23 (B) SUSPENSION OF APPLICATIONS FROM OUTSIDE MAJOR DIS-  
24 ASTER AREA.—If the Administrator determines that the average  
25 processing time for applications for disaster loans under this sub-  
26 section relating to a specific major disaster is more than 30 days,  
27 the Administrator shall suspend the processing of such applica-  
28 tions submitted by eligible small business concerns located outside  
29 the major disaster area until the Administrator determines that  
30 the average processing time for such applications is not more than  
31 15 days.

32 (3) LOAN TERMS.—A loan under this subsection shall be made on  
33 the same terms as a loan under section 221102 of this title.

34 **§ 221109. Interest rates**

35 (a) IN GENERAL.—Notwithstanding any other provision of law, except as  
36 provided in subsection (b), the interest rate on the Administrator's share  
37 of a loan under the disaster loan program shall not exceed—

38 (1) the average annual interest rate on all interest-bearing obliga-  
39 tions of the United States then forming a part of the public debt as  
40 computed at the end of the fiscal year next preceding the date of the  
41 loan and adjusted to the nearest 0.125 percent; plus

1 (2) 0.25 percent.

2 (b) LOANS UNDER SECTION 221101 OR 221102.—

3 (1) IN GENERAL.—The interest rate for a loan under section 221101  
4 or 221102 of this title shall not exceed the rate of interest that is in  
5 effect at the time of the occurrence of the disaster.

6 (2) DETERMINATION.—Notwithstanding any other provision of law,  
7 the interest rate on the Federal share of a loan under section 221101  
8 or 221102 of this title, determined as of the date of the disaster, shall  
9 be—

10 (A) in the case of a homeowner unable to secure credit else-  
11 where, the lesser of—

12 (i) a rate prescribed by the Administrator, not to exceed  
13 half a rate determined by the Secretary of the Treasury tak-  
14 ing into consideration the current average market yield on  
15 outstanding marketable obligations of the United States with  
16 remaining periods to maturity comparable to the average ma-  
17 turities of such loans plus an additional charge of not to ex-  
18 ceed 1 percent per year as determined by the Administrator,  
19 and adjusted to the nearest 0.125 percent; or

20 (ii) 4 percent per year;

21 (B) in the case of a homeowner able to secure credit elsewhere,  
22 the lesser of—

23 (i) a rate prescribed by the Administrator, not to exceed a  
24 rate determined by the Secretary of the Treasury taking into  
25 consideration the current average market yield on outstanding  
26 marketable obligations of the United States with remaining  
27 periods to maturity comparable to the average maturities of  
28 such loans plus an additional charge of not to exceed 1 per-  
29 cent per year as determined by the Administrator, and ad-  
30 justed to the nearest 0.125 percent; or

31 (ii) 8 percent per year;

32 (C) in the case of a business concern, private nonprofit organi-  
33 zation, or other concern (including an agricultural cooperative) un-  
34 able to obtain credit elsewhere, not to exceed 4 percent per year;  
35 or

36 (D) in the case of a business concern able to obtain credit else-  
37 where, a rate prescribed by the Administrator, not to exceed the  
38 lowest of—

39 (i) the rate prevailing in the private market for similar  
40 loans;

- 1 (ii) the rate prescribed by the Administrator as the maxi-  
2 mum interest rate for deferred participation (guaranteed)  
3 loans under the general business loan program; or  
4 (iii) 8 percent per year.

5 **§ 221110. Maximum term**

6 No loan under the disaster loan program (including any renewal or exten-  
7 sion of a loan) may be made for a period or periods exceeding—

- 8 (1) 30 years; or  
9 (2) in the case of a loan to a business concern under section  
10 221109(b)(2)(D) of this title that is able to obtain credit elsewhere, 7  
11 years.

12 **§ 221111. Deferment of repayment**

13 (a) IN GENERAL.—In making a loan under this chapter, the Adminis-  
14 trator may provide the person receiving the loan an option to defer repay-  
15 ment on the loan.

16 (b) DEFERMENT PERIOD.—The period of a deferment under subsection  
17 (a) shall not exceed 4 years.

18 **§ 221112. Suspension of payments**

19 (a) IN GENERAL.—The Administrator may consent to a suspension in the  
20 payment of principal and interest on, and to an extension in the maturity  
21 of, the Federal share of a loan under the disaster loan program, for a period  
22 not to exceed 5 years, if—

- 23 (1) the borrower under the loan is a homeowner or a small business  
24 concern;  
25 (2) the loan was made to enable—  
26 (A) the homeowner to repair or replace his or her home; or  
27 (B) the small business concern to repair or replace plant or  
28 equipment that was damaged or destroyed as the result of a disas-  
29 ter described in clause (i) or (ii) of section 221102(b)(2)(A) of this  
30 title; and  
31 (3) the Administrator determines that the suspension is necessary to  
32 avoid severe financial hardship.

33 (b) PURCHASE OF PARTICIPATION OR ASSUMPTION OF OBLIGATION.—  
34 During any period in which principal and interest charges are suspended  
35 under subsection (a), the Administrator shall, on the request of any person  
36 having a participation in the loan, purchase the participation, or assume the  
37 obligation of the borrower, for the balance of the period, to make principal  
38 and interest payments on the non-Federal share of the loan, if—

- 39 (1) the Administrator determines that the action is necessary to  
40 avoid a default; and



1           (2) the borrower agrees to make payments to the Administrator in  
2           an aggregate amount equal to the amount paid in the borrower's behalf  
3           by the Administrator, in such manner and at such times (during or  
4           after the term of the loan) as the Administrator determines having due  
5           regard for the purposes sought to be achieved by this subsection.

6       **§ 221113. Participation in loans on deferred basis**

7           In an agreement to participate in a loan on a deferred basis under the  
8           disaster loan program, participation by the Administrator shall not be in ex-  
9           cess of 90 percent of the balance of the loan outstanding at the time of  
10          disbursement.

11       **§ 221114. Assistance and counseling for disaster victims**

12          In administering the disaster assistance programs, to the maximum ex-  
13          tent possible, the Administrator shall provide assistance and counseling to  
14          disaster victims in—

15               (1) filing applications (including the provision of information relevant  
16               to loan processing); and

17               (2) loan closing and prompt disbursement of loan proceeds.

18       **§ 221115. Priority in allocating funds**

19          In administering the disaster assistance programs, to the maximum ex-  
20          tent possible, the Administrator shall give the disaster loan program a high  
21          priority in allocating funds for administrative expenses.

22       **§ 221116. Prohibition of cancellation of certain disaster**  
23               **loans**

24          No portion of a loan under section 221101 or 221102 of this title shall  
25          be subject to cancellation under any provision of law.

26       **§ 221117. Prohibition of net earnings clauses**

27          In making a loan under this chapter, the Administrator shall not require  
28          the borrower to pay any nonamortized amount for the 1st 5 years after re-  
29          payment begins.

30       **§ 221118. Biennial disaster simulation exercise**

31               (a) IN GENERAL.—The Administrator shall conduct a disaster simulation  
32               exercise at least once every 2 fiscal years.

33               (b) REQUIREMENTS.—A disaster simulation exercise shall—

34                     (1) include the participation of, at a minimum, not fewer than 50  
35                     percent of the individuals in the disaster reserve corps; and

36                     (2) test, at maximum capacity, all of the information technology and  
37                     telecommunications systems of the Administrator that are vital to the  
38                     activities of the Administrator during a disaster.

39               (c) REPORT.—The Administrator shall include in a report under section  
40               107118(g) of this title a report on a disaster simulation exercise conducted  
41               under subsection (a).

1    **§ 221119. Disaster planning responsibilities**

2       (a) DEFINITIONS.—In this section:

3           (1) DISASTER PLANNING OFFICER.—The term “disaster planning of-  
4           ficer” means the individual to whom the disaster planning function of  
5           the Administrator is assigned under subsection (b).

6           (2) STATE.—The term “State” means a State of the United States,  
7           the District of Columbia, Puerto Rico, the Northern Mariana Islands,  
8           the Virgin Islands, Guam, American Samoa, and any territory or pos-  
9           session of the United States.

10       (b) ASSIGNMENT OF SBA DISASTER PLANNING RESPONSIBILITIES.—The  
11       disaster planning function of the Administrator shall be assigned to an indi-  
12       vidual appointed by the Administrator who—

13           (1) is not an employee of the Office of Disaster Assistance of SBA;

14           (2) has proven management ability;

15           (3) has substantial knowledge in the field of disaster readiness and  
16           emergency response; and

17           (4) has demonstrated significant experience in the area of disaster  
18           planning.

19       (c) RESPONSIBILITIES.—The disaster planning officer shall report di-  
20       rectly and solely to the Administrator and shall be responsible for—

21           (1) developing, implementing, and maintaining the comprehensive  
22           disaster response plan under section 221120 of this title;

23           (2) ensuring that there are in-service and pre-service training proce-  
24           dures for SBA disaster response staff;

25           (3) coordinating and directing SBA training exercises relating to dis-  
26           asters, including disaster simulation exercises and disaster exercises  
27           coordinated with other government agencies; and

28           (4) other responsibilities relevant to disaster planning and readiness,  
29           as determined by the Administrator.

30       (d) COORDINATION.—In carrying out the responsibilities described in sub-  
31       section (c), the disaster planning officer shall coordinate with—

32           (1) the Office of Disaster Assistance of SBA;

33           (2) the Administrator of the Federal Emergency Management Agen-  
34           cy; and

35           (3) other Federal, State, and local disaster planning offices, as nec-  
36           essary.

37       (e) RESOURCES.—The Administrator shall ensure that the disaster plan-  
38       ning officer has adequate resources to carry out the responsibilities de-  
39       scribed in subsection (c).

**§ 221120. Disaster response plan**

(a) DEFINITION OF STATE.—In this section, the term “State” means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

(b) PLAN.—

(1) IN GENERAL.—The Administrator shall develop, implement, and maintain a comprehensive written disaster response plan.

(2) CONTENTS.—The disaster response plan shall include the following:

(A) For each SBA region, a description of the disasters most likely to occur in the SBA region.

(B) For each disaster described under subparagraph (A)—

(i) an assessment of the disaster;

(ii) an assessment of the demand for SBA assistance most likely to occur in response to the disaster;

(iii) an assessment of the needs of SBA, with respect to such resources as information technology, telecommunications, human resources, and office space, to meet the demand referred to in clause (ii); and

(iv) guidelines pursuant to which the Administrator will coordinate with other Federal agencies and with State and local authorities to best respond to the demand described in clause (ii) and to best use the resources referred to in that clause.

(c) PLAN REVISION.—The Administrator shall update the disaster response plan—

(1) annually; and

(2) following any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 221108 of this title.

(d) REQUIRED KNOWLEDGE.—The Administrator shall carry out subsections (b) and (c) through an individual with substantial knowledge in the field of disaster readiness and emergency response.

(e) REPORT.—The Administrator shall include in a report under section 107118(g) of this title a report on the disaster response plan.

**§ 221121. Coordination of disaster assistance programs with FEMA**

(a) IN GENERAL.—The Administrator shall ensure that the SBA disaster assistance programs are coordinated, to the maximum extent practicable,

1 with the disaster assistance programs of the Federal Emergency Manage-  
2 ment Agency.

3 (b) REGULATIONS.—

4 (1) IN GENERAL.—The Administrator, in consultation with the Ad-  
5 ministrator of the Federal Emergency Management Agency, shall es-  
6 tablish regulations to ensure that each application for disaster assist-  
7 ance is submitted as quickly as practicable to SBA or directed to the  
8 appropriate agency under the circumstances.

9 (2) REVISION.—The regulations shall be revised annually.

10 (c) REPORT.—The Administrator shall include in a report under section  
11 107118(g) of this title a report on the regulations under subsection (b).

12 **§ 221122. Plans to secure sufficient office space**

13 (a) IN GENERAL.—The Administrator shall develop long-term plans to se-  
14 cure sufficient office space to accommodate an expanded workforce in times  
15 of disaster.

16 (b) REPORT.—The Administrator shall include in a report under section  
17 107118(g) of this title a report on the plans developed under subsection (a).

18 **§ 221123. Bond guarantees in procurements relating to a**  
19 **major disaster**

20 (a) IN GENERAL.—Except as provided in subsection (b), and notwith-  
21 standing any other provision of law, for any procurement relating to a major  
22 disaster, the Administrator may, on such terms and conditions as the Ad-  
23 ministrator may prescribe, guarantee and enter into commitments to guar-  
24 antee a surety against loss resulting from a breach of the terms of a bid  
25 bond, payment bond, performance bond, or bonds ancillary thereto, by a  
26 principal on any total work order or contract amount at the time of bond  
27 execution that does not exceed \$5,000,000.

28 (b) INCREASE IN AMOUNT.—On request of the head of any Federal agen-  
29 cy (other than SBA) involved in reconstruction efforts in response to a  
30 major disaster, the Administrator may guarantee and enter into a commit-  
31 ment to guarantee a surety against loss under subsection (a) on any total  
32 work order or contract amount at the time of bond execution that does not  
33 exceed \$10,000,000.

34 (c) LIMITATION ON USE OF OTHER FUNDS.—The Administrator may  
35 carry out this section only with amounts appropriated in advance specifically  
36 to carry out this section.

37 **§ 221124. Civil penalty**

38 A person that wrongfully misapplies the proceeds of a loan made under  
39 the disaster loan program shall be liable to the Administrator for a civil  
40 penalty in the amount that is equal to 1.5 times the original principal  
41 amount of the loan.

## Chapter 223—Private Disaster Assistance Program

Sec.

- 223101. Definitions.
- 223102. Program.
- 223103. Use of loans.
- 223104. Online applications.
- 223105. Maximum amounts.
- 223106. Terms and conditions.
- 223107. Lenders.
- 223108. Fees.
- 223109. Documentation.
- 223110. Purchase of loans.
- 223111. Regulations.
- 223112. Authorization of appropriations.

### § 223101. Definitions

In this chapter:

(1) ELIGIBLE INDIVIDUAL.—The term “eligible individual” means an individual who is eligible for disaster assistance under section 221101 of this title relating to a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 221108 of this title.

(2) MAJOR DISASTER AREA.—The term “major disaster area” means an area for which the President declares a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 221108 of this title, during the period of the major disaster declaration.

(3) QUALIFIED PRIVATE LENDER.—The term “qualified private lender” means a privately-owned bank or other lending institution that—

(A) is not a preferred lender; and

(B) the Administrator determines meets the criteria established under section 205111 of this title.

(4) SMALL BUSINESS CONCERN.—The term “small business concern” means a small business concern (as defined in section 101102 or 301101 of this title).

### § 223102. Program

The Administrator shall carry out a program, to be known as the private disaster assistance program, under which the Administrator may guarantee timely payment of principal and interest, as scheduled, on any loan made to a small business concern located in a major disaster area or to an eligible individual.

### § 223103. Use of loans

A loan guaranteed by the Administrator under this chapter may be used for any purpose authorized under chapter 213.

**§ 223104. Online applications**

(a) ESTABLISHMENT OF PROCESS.—The Administrator may establish, directly or through an agreement with another entity, an online application process for loans guaranteed under this chapter.

(b) OTHER FEDERAL ASSISTANCE.—The Administrator may coordinate with the head of any other appropriate Federal agency so that any application submitted through an online application process established under this section may be considered for any other Federal assistance program for disaster relief.

(c) CONSULTATION.—In establishing an online application process under this section, the Administrator shall consult with appropriate persons from the public and private sectors, including private lenders.

**§ 223105. Maximum amounts**

(a) GUARANTEE PERCENTAGE.—The Administrator may guarantee not more than 85 percent of a loan under this chapter.

(b) LOAN AMOUNT.—The maximum amount of a loan guaranteed under this chapter shall be \$2,000,000.

**§ 223106. Terms and conditions**

A loan guaranteed under this chapter shall be made under the same terms and conditions as a loan under chapter 221.

**§ 223107. Lenders**

(a) IN GENERAL.—

(1) LOANS TO AN ELIGIBLE INDIVIDUAL.—A loan guaranteed under this chapter made to an eligible individual may be made by a preferred lender.

(2) LOANS TO A SMALL BUSINESS CONCERN.—A loan guaranteed under this chapter made to a small business concern may be made by a qualified private lender or by a preferred lender that also makes loans to eligible individuals.

(b) COMPLIANCE.—If the Administrator determines that a preferred lender knowingly failed to comply with the underwriting standards for loans guaranteed under this chapter or violated the terms of the standard operating procedure agreement between the preferred lender and the Administrator, the Administrator shall do 1 or both of the following:

(1) Exclude the preferred lender from participating in the private disaster assistance program.

(2) Exclude the preferred lender from participating in the preferred lender program for a period of not more than 5 years.

**§ 223108. Fees**

(a) IN GENERAL.—The Administrator shall not collect a guarantee fee under this chapter.

(b) ORIGATION FEE.—The Administrator may pay a qualified private lender or preferred lender an origination fee for a loan guaranteed under this chapter in an amount agreed on in advance between the qualified private lender or preferred lender and the Administrator.

**§ 223109. Documentation**

(a) IN GENERAL.—A qualified private lender or preferred lender may use its own loan documentation for a loan guaranteed by the Administrator under this chapter, to the extent authorized by the Administrator.

(b) NOT PART OF QUALIFICATION CRITERIA.—The ability of a lender to use its own loan documentation for a loan guaranteed under this chapter shall not be considered part of the criteria for becoming a qualified private lender under the regulations promulgated under section 223111 of this title.

**§ 223110. Purchase of loans**

The Administrator may enter into an agreement with a qualified private lender or preferred lender to purchase any loan guaranteed under this chapter.

**§ 223111. Regulations**

The Administrator shall promulgate regulations establishing permanent criteria for qualified private lenders.

**§ 223112. Authorization of appropriations**

(a) IN GENERAL.—Amounts necessary to carry out this chapter shall be made available from amounts appropriated to SBA to carry out chapter 221.

(b) AUTHORITY TO REDUCE INTEREST RATES AND OTHER TERMS AND CONDITIONS.—Funds appropriated to SBA to carry out this chapter may be used by the Administrator to meet the loan terms and conditions specified in section 223106 of this title.

## **Chapter 225—Immediate Disaster Assistance Program**

Sec.

225101. Definition of program.

225102. Program.

225103. Eligibility.

225104. Use of proceeds.

225105. Loan terms.

225106. Approval or disapproval.

**§ 225101. Definition of program**

In this chapter, the term “program” means the immediate disaster assistance program established under section 225102 of this title.

**§ 225102. Program**

The Administrator shall carry out a program, to be known as the immediate disaster assistance program, under which the Administrator participates on a deferred (guaranteed) basis in 85 percent of the balance of the

1 financing outstanding at the time of disbursement of the loan if the balance  
2 is less than or equal to \$25,000 for business concerns affected by a disaster.

3 **§ 225103. Eligibility**

4 To receive a loan guarantee under section 225102 of this title, an appli-  
5 cant shall apply for, and meet basic eligibility standards for, a loan under  
6 chapter 221 or 223.

7 **§ 225104. Use of proceeds**

8 A business concern that receives a loan under chapter 221 or 223 shall  
9 use the proceeds of the loan to repay all loans guaranteed under section  
10 225102 of this title, if any, before using the proceeds for any other purpose.

11 **§ 225105. Loan terms**

12 (a) NO PREPAYMENT PENALTY.—There shall be no prepayment penalty  
13 on a loan guaranteed under section 225102 of this title.

14 (b) REPAYMENT.—A business concern that receives a loan guaranteed  
15 under section 225102 of this title and that is disapproved for a loan under  
16 chapter 221 or 223 shall repay the loan guaranteed under section 225102  
17 of this title not later than the date established by the Administrator, which  
18 shall not be earlier than 10 years after the date on which the loan guaran-  
19 teed under section 225102 of this title is disbursed.

20 **§ 225106. Approval or disapproval**

21 The Administrator shall ensure that each applicant for a loan under the  
22 program receives a decision approving or disapproving the application within  
23 36 hours after the Administrator receives the application.

24 **Chapter 227—Expedited Disaster Assist-**  
25 **ance Business Loan Guarantee Program**

Sec.

227101. Definition of program.

227102. Program.

227103. Consultation.

227104. Regulations.

26 **§ 227101. Definition of program**

27 In this chapter, the term “program” means the expedited disaster assist-  
28 ance business loan guarantee program established under section 227102 of  
29 this title.

30 **§ 227102. Program**

31 The Administrator shall establish and implement an expedited disaster  
32 assistance business loan guarantee program under which the Administrator  
33 may, on an expedited basis, guarantee timely payment of principal and in-  
34 terest, as scheduled on any loan made to an eligible small business concern  
35 under section 221108 of this title.

36 **§ 227103. Consultation**

37 In establishing the program, the Administrator shall consult with—



- 1 (1) appropriate personnel (including SBA district office personnel) of
- 2 SBA;
- 3 (2) appropriate technical assistance providers (including small busi-
- 4 ness development centers);
- 5 (3) appropriate lenders and credit unions; and
- 6 (4) the Committee on Small Business and Entrepreneurship of the
- 7 Senate and Committee on Small Business of the House of Representa-
- 8 tives.

9 **§ 227104. Regulations**

10 (a) IN GENERAL.—The Administrator shall issue regulations establishing

11 and implementing the program in accordance with this chapter.

12 (b) CONTENTS.—The regulations shall—

13 (1) identify whether appropriate uses of funds under the program

14 may include—

15 (A) paying employees;

16 (B) paying bills and other financial obligations;

17 (C) making repairs;

18 (D) purchasing inventory;

19 (E) restarting or operating a small business concern in the com-

20 munity in which the small business concern was conducting oper-

21 ations prior to the applicable major disaster or in a neighboring

22 area in the disaster area; or

23 (F) covering additional costs until the small business concern is

24 able to obtain funding through insurance claims, Federal assist-

25 ance programs, or other sources; and

26 (2) set the terms and conditions of any loan made under the pro-

27 gram.

28 (c) TERMS AND CONDITIONS.—A loan guaranteed by the Administrator

29 under the program—

30 (1) shall be for not more than \$150,000;

31 (2) shall be a short-term loan, not to exceed 180 days, except that

32 the Administrator may extend the term as the Administrator deter-

33 mines to be appropriate on a case-by-case basis;

34 (3) shall have an interest rate not to exceed 300 basis points above

35 the interest rate established by the Board of Governors of the Federal

36 Reserve System that 1 bank charges another for reserves that are lent

37 on an overnight basis on the date on which the loan is made;

38 (4) shall have no prepayment penalty;

39 (5) may be made only to a borrower that meets the requirements for

40 a loan under chapter 221;

1 (6) may be refinanced as part of any subsequent disaster assistance  
2 provided under chapter 221;

3 (7) may receive expedited loss verification and loan processing, if the  
4 applicant—

5 (A) is a major source of employment in the disaster area (which  
6 shall be determined in the same manner as under section  
7 221103(e)(2) of this title); or

8 (B) is vital to recovery efforts in the region (including providing  
9 debris removal services, manufactured housing, or building mate-  
10 rials); and

11 (8) shall be subject to such additional terms as the Administrator  
12 determines to be appropriate.

## 13 **Division F—Business Development** 14 **Program**

### 15 **Chapter 231—General Provisions**

Sec.

- 231101. Definitions.
- 231102. Establishment of business development program.
- 231103. Unemployed or low-income individuals.
- 231104. Restrictions on activities of SBA employees.
- 231105. Encouragement of subcontracts.
- 231106. Federal contracts, subcontracts, and deposits.
- 231107. Business opportunity specialists.
- 231108. Requests for investigation.
- 231109. Use of procurement authority.

#### 16 **§ 231101. Definitions**

17 In this division:

18 (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Adminis-  
19 trator” means the Associate Administrator for Minority Small Business  
20 and Capital Ownership Development.

21 (2) BUSINESS ACTIVITY TARGET.—The term “business activity tar-  
22 get” means a target contained in a business plan for contracts awarded  
23 other than through the program.

24 (3) BUSINESS OPPORTUNITY SPECIALIST.—The term “business op-  
25 portunity specialist” means an SBA employee responsible for providing  
26 business development assistance to a program participant.

27 (4) BUSINESS PLAN.—The term “business plan” means the business  
28 plan of a program participant under section 233118 of this title.

29 (5) DIRECTOR.—The term “Director” means the Director of the Di-  
30 vision.

31 (6) DISADVANTAGED OWNER.—The term “disadvantaged owner”  
32 means an individual on whom eligibility is based for participation in  
33 the business development program.

1 (7) DIVISION.—The term “Division” means the Division of Program  
2 Certification and Eligibility established by section 103108 of this title.

3 (8) ECONOMICALLY DISADVANTAGED INDIAN TRIBE.—The term  
4 “economically disadvantaged Indian tribe” means an Indian tribe that  
5 the Administrator determines to be economically disadvantaged based  
6 on consideration of available information such as—

7 (A) the per capita income of members of the Indian tribe, ex-  
8 cluding judgment awards;

9 (B) the percentage of the local Indian population below the pov-  
10 erty level; and

11 (C) the Indian tribe’s access to capital markets.

12 (9) EXECUTIVE AGENCY.—The term “executive agency” has the  
13 meaning given the term in section 133 of title 41.

14 (10) GRADUATE.—The term “graduate”, with reference to a pro-  
15 gram participant, means to graduate the program participant from the  
16 program under section 233120 of this title.

17 (11) INDIAN TRIBE.—The term “Indian tribe” means an Indian  
18 tribe, band, nation, or other organized group or community of Indians,  
19 including any Alaska Native village or regional or village corporation  
20 (within the meaning of the Alaska Native Claims Settlement Act (43  
21 U.S.C. 1601 et seq.)) that—

22 (A) is recognized as eligible for the special programs and serv-  
23 ices provided by the United States to Indians because of their  
24 status as Indians; or

25 (B) is recognized as such by the State in which the Indian tribe,  
26 band, nation, group, or community resides.

27 (12) PROGRAM.—The term “program” means the business develop-  
28 ment program.

29 (13) PROGRAM PARTICIPANT.—The term “program participant”  
30 means a small business concern that is participating in the program.

31 (14) PROGRAM PARTICIPATION PERIOD.—The term “program par-  
32 ticipation period”, with respect to a program participant, means the pe-  
33 riod of program participation applicable to the program participant  
34 under section 233129 of this title.

35 (15) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SO-  
36 CIALY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—

37 (A) IN GENERAL.—The term “small business concern owned  
38 and controlled by socially and economically disadvantaged individ-  
39 uals” means a small business concern—

40 (i) not less than 51 percent of which is unconditionally  
41 owned by—

1 (I) 1 or more socially and economically disadvantaged  
2 individuals;

3 (II) an economically disadvantaged Indian tribe (or a  
4 wholly owned business entity of an economically dis-  
5 advantaged Indian tribe); or

6 (III) an economically disadvantaged Native Hawaiian  
7 organization; and

8 (ii) the management and daily business operations of which  
9 are controlled by 1 or more—

10 (I) socially and economically disadvantaged individ-  
11 uals;

12 (II) members of an economically disadvantaged Indian  
13 tribe; or

14 (III) Native Hawaiian organizations.

15 (B) SIZE DETERMINATION FOR INDIAN TRIBES.—In determin-  
16 ing the size of a concern owned by an economically disadvantaged  
17 Indian tribe (or a wholly owned business entity of an economically  
18 disadvantaged Indian tribe) for purposes of subparagraph (A), the  
19 concern's size shall be independently determined without regard to  
20 its affiliation with the Indian tribe, any entity of the tribal govern-  
21 ment, or any other business enterprise owned by the Indian tribe,  
22 unless the Administrator determines that 1 or more such tribally  
23 owned business concerns have obtained, or are likely to obtain, a  
24 substantial unfair competitive advantage within an industry cat-  
25 egory.

26 (16) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL.—

27 (A) IN GENERAL.—The term “socially and economically dis-  
28 advantaged individual” means a member of a group of socially dis-  
29 advantaged individuals whose ability to compete in the free enter-  
30 prise system has been impaired due to diminished capital and  
31 credit opportunities as compared with others in the same business  
32 area who are not socially disadvantaged.

33 (B) DETERMINATION OF DEGREE OF DIMINISHED CREDIT AND  
34 CAPITAL OPPORTUNITIES.—In determining the degree of dimin-  
35 ished credit and capital opportunities, the Administrator shall con-  
36 sider, among other things, the assets and net worth of a socially  
37 disadvantaged individual.

38 (C) NET WORTH.—In computing personal net worth for pur-  
39 poses of this paragraph, there shall be excluded—

40 (i) the value of investments that disadvantaged owners  
41 have in their concern, except that the value of such invest-

ments shall be taken into account when comparing the concern to other concerns in the same business area that are owned by other than socially disadvantaged persons; and

(ii) the equity that disadvantaged owners have in their primary personal residences, except that any portion of such equity that is attributable to unduly excessive withdrawals from a program participant or a concern applying for program participation shall be taken into account.

(17) SOCIALLY DISADVANTAGED INDIVIDUAL.—

(A) IN GENERAL.—The term “socially disadvantaged individual” means a member of a group of individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of the group without regard to their individual qualities.

(B) DETERMINATION.—A determination under subparagraph (A) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development.

(18) TERMINATE.—The term “terminate”, with reference to a program participant, means to suspend or totally deny assistance to a program participant under the program, prior to the graduation of the program participant or prior to the expiration of the program participant’s program participation period, under section 233121 of this title.

**§ 231102. Establishment of business development program**

There is established within SBA the business development program, which shall provide assistance exclusively for small business concerns eligible to receive contracts under chapter 233.

**§ 231103. Unemployed or low-income individuals**

The program shall be used to—

(1) assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in small business concerns, with special attention to, and particular emphasis on the preservation or establishment of, small business concerns that are—

(A) located in urban or rural areas with high proportions of unemployed or low-income individuals; or

(B) owned by low-income individuals; and

(2) mobilize for those objectives private as well as public managerial skills and resources.

1    **§ 231104. Restrictions on activities of SBA employees**

2       (a) ACTIVITIES AND TRANSACTIONS RELATING TO OWNERSHIP OF A  
3   PROGRAM PARTICIPANT.—

4           (1) IN GENERAL.—A person within the employ of SBA shall not,  
5       during the term of such employment and for a period of 2 years after  
6       the employment has been terminated, engage in any activity or trans-  
7       action described in paragraph (2) with respect to any program partici-  
8       pant during the person's term of employment, if the person partici-  
9       pated personally (directly or indirectly)—

10           (A) in decisionmaking responsibilities relating to the program  
11       participant; or

12           (B) with respect to the administration of any assistance pro-  
13       vided to program participants generally under the program.

14       (2) ACTIVITIES AND TRANSACTIONS.—The activities and transactions  
15       referred to in paragraph (1) are—

16           (A) the buying, selling, or receiving (except by inheritance) of  
17       any legal or beneficial ownership of stock or any other ownership  
18       interest or the right to acquire any such interest;

19           (B) the entering into or execution of any written or oral agree-  
20       ment (whether or not legally enforceable) to purchase or otherwise  
21       obtain any right or interest described in subparagraph (A); and

22           (C) the receipt of any other benefit or right that may be an inci-  
23       dent of ownership.

24       (3) ANNUAL CERTIFICATION.—

25           (A) IN GENERAL.—An employee described in subparagraph (B)  
26       shall annually submit to the Administrator a written certification  
27       regarding compliance with this section.

28           (B) EMPLOYEE.—The employees referred to in subparagraph

29       (A) are—

30           (i) a regional administrator;

31           (ii) a district director;

32           (iii) the Associate Administrator;

33           (iv) an employee whose principal duties relate to the award  
34       of contracts or the provision of other assistance under the  
35       program; and

36           (v) such other employees as the Administrator may des-  
37       ignate.

38       (4) CIVIL PENALTIES.—

39           (A) IN GENERAL.—An employee or former employee of SBA  
40       who violates this section shall be subject to a civil penalty, as-  
41       sessed by the Attorney General, that shall not exceed 300 percent

1 of the maximum amount of gain that the employee realized or  
2 could have realized as a result of engaging in the activity and  
3 transaction prohibited by paragraph (1).

4 (B) FALSE CERTIFICATION.—In addition to any other remedy  
5 or sanction provided for under law (including a regulation), a per-  
6 son who makes a false certification under paragraph (3)(A) shall  
7 be subject to a civil penalty under section 3802 of title 31.

8 (b) POLITICAL ACTIVITIES AND AFFILIATIONS.—

9 (1) PROHIBITION.—An employee of SBA who has authority to take,  
10 direct others to take, recommend, or approve any action with respect  
11 to any program or activity under the program shall not, with respect  
12 to any such action, exercise or threaten to exercise that authority on  
13 the basis of the political activity or affiliation of any person.

14 (2) REPORTING OF SOLICITATION TO VIOLATE.—An employee of  
15 SBA whose participation in a violation of paragraph (1) is directed or  
16 solicited shall expeditiously report the direction or solicitation to the In-  
17 spector General of SBA.

18 (3) DISCIPLINARY ACTION.—An employee of SBA who willfully and  
19 knowingly violates paragraph (1) or (2) shall be subject to disciplinary  
20 action, which may consist of separation from service, reduction in  
21 grade, suspension, or reprimand.

22 (4) APPLICABILITY.—Paragraphs (1) and (2) do not apply to an ac-  
23 tion taken as a penalty or other enforcement of a violation of any law  
24 (including a regulation) prohibiting or restricting political activity.

25 (5) OTHER PROHIBITIONS, MEASURES, AND LIABILITIES.—Para-  
26 graphs (1) to (4) are in addition to, and not in lieu of, any other prohi-  
27 bitions, measures, or liabilities that may arise under any other provi-  
28 sion of law.

29 **§ 231105. Encouragement of subcontracts**

30 (a) IN GENERAL.—The Administrator shall encourage the placement of  
31 subcontracts by businesses with small business concerns located in areas of  
32 high concentration of unemployed or low-income individuals and with pro-  
33 gram participants.

34 (b) INCENTIVES AND ASSISTANCE.—The Administrator may provide in-  
35 centives and assistance to a business to aid in the training and upgrading  
36 of—

37 (1) potential small business concern subcontractors; and

38 (2) program participants.

39 **§ 231106. Federal contracts, subcontracts, and deposits**

40 The Administrator shall take such steps as are necessary and appro-  
41 priate, in coordination and cooperation with the heads of other Federal

agencies, to ensure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such a way as to further the purposes of the program.

**§ 231107. Business opportunity specialists**

(a) POSITION.—In each SBA field office responsible for assisting 1 or more program participants there shall be a position designated as a business opportunity specialist.

(b) ADEQUATE NUMBER.—To the maximum extent practicable, the Administrator shall ensure that an adequate number of business opportunity specialists are assigned to each district office to carry out the responsibilities of the program and to assist program participants.

(c) TRAINING.—The Administrator shall take such actions as are appropriate to ensure that any person employed as a business opportunity specialist receives adequate periodic training to ensure that the employee is capable of assisting program participants in fully utilizing the program and meeting the requirements of this subtitle and subtitle I.

**§ 231108. Requests for investigation**

The Committee on Small Business and Entrepreneurship of the Senate or the Committee on Small Business of the House of Representatives may request that the Office of the Inspector General of SBA conduct an investigation of any activity conducted under the program. Not later than 30 days after the receipt of such a request, the Inspector General shall inform the committee, in writing, of the disposition of the request.

**§ 231109. Use of procurement authority**

The procurement authority under the program shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

## Chapter 233—Contracting

Sec.

- 233101. Contracting authority.
- 233102. Contracting procedure.
- 233103. Fair market price.
- 233104. Award after completion of program participation period.
- 233105. Award through competition.
- 233106. Participation by program participants in negotiation of contracts to be awarded non-competitively.
- 233107. Sole source award.
- 233108. Annual certification regarding ownership and control.
- 233109. Annual submission regarding economic disadvantage.
- 233110. Review of economic disadvantage and withdrawal of assets.
- 233111. Hearing on the record.
- 233112. Program participant capability.
- 233113. Percentages of contract performance by program participants.
- 233114. Wholesalers and retailers.
- 233115. Reporting by program participants to business opportunity specialists.
- 233116. Transfer of ownership or control.
- 233117. Assistance for program participants.
- 233118. Business plans.
- 233119. Denial of further assistance.



- 233120. Graduation.
- 233121. Termination.
- 233122. Evaluation of eligibility.
- 233123. Limitation of eligibility to 1 small business concern.
- 233124. Limitation on denial of admission into program based on unavailability of specific contract opportunities.
- 233125. Certification decision.
- 233126. Review of new entrants into the program.
- 233127. Program stages.
- 233128. Attainment of business activity targets.
- 233129. Program participation period.
- 233130. Collection of data on program operations.
- 233131. Approval of contract options and modifications.
- 233132. Orderly and efficient management of program.
- 233133. Participation in federally funded programs and projects.

1     **§ 233101. Contracting authority**

2         (a) IN GENERAL.—When the Administrator determines that such action  
3     is necessary or appropriate, the Administrator shall—

4             (1) enter into contracts with procuring agencies obligating the Ad-  
5     ministrator to furnish articles, equipment, supplies, services, or mate-  
6     rials to the Government or to perform construction work for the Gov-  
7     ernment; and

8             (2) arrange for the performance of such contracts by negotiating or  
9     otherwise letting a subcontract to 1 or more small business concerns  
10    owned and controlled by socially and economically disadvantaged indi-  
11    viduals—

12                 (A) for the manufacture, supply, assembly of the articles, equip-  
13     ment, supplies, materials, or parts thereof, for the construction  
14     work, for the services, or for servicing or processing in connection  
15     with the manufacturing, construction, or services; or

16                 (B) for such management services as are necessary to enable  
17     the Administrator to perform the contract.

18         (b) CONSTRUCTION SUBCONTRACTS.—To the maximum extent prac-  
19     ticable, construction subcontracts awarded by the Administrator under the  
20     program shall be awarded within the county or State in which the work is  
21     to be performed.

22         (c) INAPPLICABILITY TO CERTAIN PROCUREMENTS.—The requirements  
23     of the program do not apply to—

24             (1) a procurement under conditions described in—

25                 (A) paragraph (2), (3), (4), (5), or (7) of section 3304 of title  
26     41; or

27                 (B) paragraph (2), (3), (4), (5), or (7) of section 2304(c) of  
28     title 10; or

29             (2) a procurement by an executive agency for which the head of the  
30     executive agency makes a determination in writing, after consultation  
31     with the Administrator and the Administrator for Federal Procurement

1 Policy, that it is not appropriate or reasonable to publish a notice be-  
2 fore issuing a solicitation.

3 **§ 233102. Contracting procedure**

4 (a) IN GENERAL.—If the Administrator certifies to a contracting officer  
5 of a procuring agency that the Administrator is competent and responsible  
6 to perform a specific Federal agency procurement contract to be let by the  
7 contracting officer, the contracting officer may let the contract to the Ad-  
8 ministrator on such terms and conditions as may be agreed on between the  
9 Administrator and the contracting officer.

10 (b) FAILURE TO AGREE.—

11 (1) IN GENERAL.—If the Administrator and the contracting officer  
12 fail to agree on a procurement contract—

13 (A) not later than 5 days after the date on which the Adminis-  
14 trator is notified of the contracting officer's adverse decision, the  
15 Administrator may notify the contracting officer of the intent to  
16 appeal the adverse decision; and

17 (B) not later than 15 days after that date, the Administrator  
18 shall file a written request for a reconsideration of the adverse de-  
19 cision with the head of the procuring agency.

20 (2) ADVERSE DECISION.—For the purposes of paragraph (1)(A), a  
21 contracting officer's adverse decision includes—

22 (A) a decision not to make available for award under the pro-  
23 gram a particular procurement requirement; and

24 (B) a failure to agree on the terms and conditions of a contract  
25 to be awarded noncompetitively under the program.

26 (3) SUSPENSION OF ACTION.—On receipt of a notice of intent to ap-  
27 peal under paragraph (1)(A), the agency head shall suspend further ac-  
28 tion regarding the procurement until a written decision on the Adminis-  
29 trator's request for reconsideration is issued by the agency head, unless  
30 the contracting officer makes a written determination that urgent and  
31 compelling circumstances that significantly affect interests of the  
32 United States will not permit waiting for a reconsideration of the ad-  
33 verse decision.

34 (4) DENIAL OF REQUEST FOR RECONSIDERATION.—If the Adminis-  
35 trator's request for reconsideration is denied, the procuring agency  
36 head shall specify the reasons why the small business concern selected  
37 by the Administrator to perform the procurement requirement was de-  
38 termined to be incapable of performing the procurement requirement,  
39 and the findings supporting the determination, which shall be made a  
40 part of the contract file for the requirement.

1     **§ 233103. Fair market price**

2       (a) IN GENERAL.—A contract may not be awarded under the program  
3     if the award of the contract would result in a cost to the procuring agency  
4     that exceeds a fair market price.

5       (b) DETERMINATION.—

6           (1) IN GENERAL.—The fair market price under subsection (a) shall  
7     be determined by the procuring agency in accordance with this sub-  
8     section.

9           (2) NEW PROCUREMENT.—

10          (A) IN GENERAL.—The estimate of a current fair market price  
11     for a new procurement requirement, or a requirement that does  
12     not have a satisfactory procurement history, shall be derived from  
13     a price or cost analysis.

14          (B) FACTORS.—A price or cost analysis—

15           (i) may take into account prevailing market conditions,  
16     commercial prices for similar products or services, or data ob-  
17     tained from any other Federal agency; and

18           (ii) shall consider such cost or pricing data as may be time-  
19     ly submitted by the Administrator.

20          (3) PROCUREMENTS WITH SATISFACTORY PROCUREMENT HIS-  
21     TORY.—

22          (A) IN GENERAL.—The estimate of a current fair market price  
23     for a procurement requirement that has a satisfactory procure-  
24     ment history shall be based on recent award prices adjusted to en-  
25     sure comparability.

26          (B) ADJUSTMENT.—An adjustment under subparagraph (A)  
27     shall take into account differences in quantities, performance  
28     times, plans, specifications, transportation costs, packaging and  
29     packing costs, labor and materials costs, overhead costs, and any  
30     other additional costs that are considered appropriate.

31       (c) ESTIMATION METHOD.—

32           (1) IN GENERAL.—On the request of the Administrator, the procur-  
33     ing agency shall promptly submit to the Administrator a written state-  
34     ment detailing the method used by the procuring agency to estimate  
35     the current fair market price for the contract, identifying the informa-  
36     tion, studies, analyses, and other data used by the procuring agency.

37           (2) NONDISCLOSURE.—The procuring agency's estimate of the cur-  
38     rent fair market price and any supporting data furnished to the Ad-  
39     ministrator shall not be disclosed to any potential offeror other than  
40     the Administrator.

(d) PROTEST.—A small business concern selected by the Administrator to perform or negotiate a contract to be let under the program may request the Administrator to protest the procuring agency's estimate of the fair market price for the contract.

**§ 233104. Award after completion of program participation period**

The Administrator shall make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals that has completed its program participation period if—

(1) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted under section 233105 of this title; and

(2) the prospective contract awardee was a program participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation.

**§ 233105. Award through competition**

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a contract opportunity offered for award under the program shall be awarded on the basis of competition restricted to eligible program participants if—

(1) there is a reasonable expectation that—

(A) at least 2 eligible program participants will submit offers;

and

(B) an award can be made at a fair market price; and

(2) the anticipated award price of the contract (including options) will exceed—

(A) \$5,000,000, in the case of a contract opportunity assigned a North American Industry Classification System code for manufacturing; or

(B) \$3,000,000, in the case of any other contract opportunity.

(b) RESTRICTED COMPETITION FOR SMALLER CONTRACTS.—

(1) IN GENERAL.—The Associate Administrator may approve a request from a Federal agency to award a contract opportunity under the program on the basis of a competition restricted to eligible program participants even if the anticipated award price is not expected to exceed the dollar amounts specified in subsection (a)(2).

(2) APPROVALS.—Approvals under paragraph (1) shall be granted only on a limited basis.

(3) NONDELEGABILITY.—The authority of the Associate Administrator under paragraph (1) may not be delegated.

(c) PROGRAM PARTICIPANTS OWNED AND CONTROLLED BY AN ECONOMICALLY DISADVANTAGED INDIAN TRIBE.—Subsection (a) does not preclude

1 the award of a sole source contract under section 233107 of this title, with-  
2 out regard to the anticipated award price of the contract, to a program par-  
3 ticipant that is owned and controlled by an economically disadvantaged In-  
4 dian tribe.

5 (d) PROGRAM PARTICIPANTS OWNED AND CONTROLLED BY NATIVE HA-  
6 WAIAN ORGANIZATIONS.—For purposes of contracting with agencies of the  
7 Department of Defense, subsection (a) does not preclude the award of a sole  
8 source contract under section 233107 of this title, without regard to the an-  
9 ticipated award price of the contract, to a program participant that is  
10 owned and controlled by a Native Hawaiian organization.

11 **§ 233106. Participation by program participants in negotia-**  
12 **tion of contracts to be awarded noncompetitively**

13 A program participant selected by the Administrator to perform a con-  
14 tract to be let noncompetitively under the program shall, when practicable,  
15 participate in any negotiation of the terms and conditions of the contract.

16 **§ 233107. Sole source award**

17 (a) IN GENERAL.—The Administrator shall award a sole source contract  
18 under the program to a program participant recommended by the Federal  
19 agency offering the contract opportunity if—

20 (1) the program participant is determined to be a responsible con-  
21 tractor with respect to performance of the contract;

22 (2) the award of the contract would be consistent with the program  
23 participant's business plan; and

24 (3) the award of the contract would not result in the program par-  
25 ticipant's exceeding the requirements established by section 233128 of  
26 this title.

27 (b) EQUITABLE GEOGRAPHIC DISTRIBUTION.—To the maximum extent  
28 practicable, the Administrator shall promote the equitable geographic dis-  
29 tribution of sole source contracts awarded under this section.

30 **§ 233108. Annual certification regarding ownership and con-**  
31 **trol**

32 A program participant shall annually certify that the program participant  
33 meets the requirements of section 231101(15) of this title regarding owner-  
34 ship and control.

35 **§ 233109. Annual submission regarding economic disadvan-**  
36 **tage**

37 A program participant shall annually submit to the Administrator—

38 (1) a personal financial statement for each disadvantaged owner;

39 (2) a record of all payments made by the program participant to  
40 each of its disadvantaged owners or to any person or entity affiliated  
41 with its disadvantaged owners; and

1 (3) such other information as the Administrator considers necessary  
2 to make the determinations required by paragraphs (8) and (16) of  
3 section 231101 of this title and section 233110 of this title.

4 **§ 233110. Review of economic disadvantage and withdrawal**  
5 **of assets**

6 (a) ECONOMIC DISADVANTAGE.—If, on the basis of information provided  
7 by a program participant under section 233109 of this title or information  
8 otherwise obtained by the Administrator, the Administrator has reason to  
9 believe that the standards to establish economic disadvantage under section  
10 231101(15) of this title are not met, the Administrator shall conduct a re-  
11 view to determine whether the program participant and its disadvantaged  
12 owners continue to be impaired in their ability to compete in the free enter-  
13 prise system due to diminished capital and credit opportunities as compared  
14 with others in the same business area who are not socially disadvantaged.

15 (b) WITHDRAWAL OF ASSETS.—

16 (1) IN GENERAL.—If, on the basis of information provided by a pro-  
17 gram participant under section 233109 of this title or information  
18 otherwise obtained by the Administrator, the Administrator has reason  
19 to believe that the amount of funds or other assets withdrawn from a  
20 program participant for the personal benefit of its disadvantaged own-  
21 ers or any person or entity affiliated with its disadvantaged owners  
22 may have been unduly excessive, the Administrator shall conduct a re-  
23 view to determine whether the withdrawal of funds or other assets was  
24 detrimental to the achievement of the targets, objectives, and goals con-  
25 tained in the program participant's business plan.

26 (2) TERMINATION OR REQUIREMENT TO REINVEST ASSETS.—If the  
27 Administrator determines in a review under paragraph (1) that funds  
28 or other assets have been withdrawn to the detriment of the program  
29 participant's business, the Administrator shall—

30 (A) initiate a proceeding to terminate the program participant  
31 under section 233121 of this title; or

32 (B) require an appropriate reinvestment of funds or other assets  
33 and such other steps as the Administrator considers necessary to  
34 ensure the protection of the program participant.

35 **§ 233111. Hearing on the record**

36 (a) OPPORTUNITY FOR HEARING.—Before taking an action described in  
37 subsection (b) with respect to a small business concern, the Administrator  
38 shall provide the small business concern an opportunity for a hearing on the  
39 record in accordance with chapter 5 of title 5.

40 (b) ACTIONS.—The actions referred to in subsection (a) are—

1 (1) denial of admission to the program based on a determination  
2 that—

3 (A) a small business concern is not a small business concern  
4 owned and controlled by socially and economically disadvantaged  
5 individuals under section 231101(15) of this title;

6 (B) 1 or more of the owners of a small business concern is not  
7 a socially disadvantaged individual under section 231101(17) of  
8 this title; or

9 (C) 1 or more of the owners of a small business concern is not  
10 a socially and economically disadvantaged individual under section  
11 231101(16);

12 (2) graduation under section 233120 of this title;

13 (3) termination under section 233121 of this title; and

14 (4) denial of a request to issue a waiver under section 233116(b) of  
15 this title.

16 (e) DECLINATION OF JURISDICTION.—The administrative law judge se-  
17 lected to preside over a proceeding under this section shall decline to accept  
18 jurisdiction over any matter that—

19 (1) does not, on its face, allege facts that, if proven to be true, would  
20 warrant reversal or modification of the Administrator's position;

21 (2) is untimely filed;

22 (3) is not filed in accordance with the rules of procedure governing  
23 the proceeding; or

24 (4) has been decided by or is the subject of an adjudication before  
25 a court of competent jurisdiction over such matters.

26 (d) TIMING.—A proceeding under this section shall be completed and a  
27 decision rendered, insofar as practicable, not later than 90 days after a peti-  
28 tion for a hearing is filed with the Office of Hearings and Appeals.

29 (e) FINAL DECISION.—A decision rendered under this section shall be the  
30 final decision of the Administrator and shall be binding on the Adminis-  
31 trator and persons in the employ of the Administrator.

32 **§ 233112. Program participant capability**

33 (a) ELIGIBILITY FOR ASSISTANCE.—

34 (1) IN GENERAL.—A small business concern shall not be eligible for  
35 assistance under the program unless the Administrator determines that  
36 with contract, financial, technical, and management support, the small  
37 business concern—

38 (A) will be able to perform contracts that may be awarded to  
39 the small business concern under 233104 of this title; and

40 (B) has reasonable prospects for success in competing in the  
41 private sector.

1 (2) PERIOD OF OPERATION.—

2 (A) IN GENERAL.—The Administrator may prescribe a mini-  
3 mum period of time during which a prospective program partici-  
4 pant must be in operation to meet the eligibility requirements of  
5 paragraph (1) only if the Administrator provides a waiver of the  
6 minimum period as provided in subparagraph (B).

7 (B) WAIVER.—The Administrator shall provide that any re-  
8 quirement that the Administrator establishes regarding the period  
9 of time during which a prospective program participant must have  
10 been in operation may be waived, and that a prospective program  
11 participant that otherwise meets the requirements of paragraph  
12 (1) shall be considered to have demonstrated reasonable prospects  
13 for success, if—

14 (i) the individual or individuals upon whom eligibility is to  
15 be based have substantial and demonstrated business man-  
16 agement experience;

17 (ii) the prospective program participant has demonstrated  
18 technical expertise to carry out its business plan with a sub-  
19 stantial likelihood for success;

20 (iii) the prospective program participant has adequate cap-  
21 ital to carry out its business plan;

22 (iv) the prospective program participant has a record of  
23 successful performance on contracts from governmental and  
24 nongovernmental sources in the primary industry category in  
25 which the prospective program participant is seeking certifi-  
26 cation; and

27 (v) the prospective program participant has, or can dem-  
28 onstrate its ability to timely obtain, the personnel, facilities,  
29 equipment, and any other requirements needed to perform  
30 such contracts.

31 (b) CAPABILITY.—

32 (1) CAPABILITY STATEMENTS.—

33 (A) ANNUAL SUBMISSION.—A program participant shall annu-  
34 ally submit to the Administrator a capability statement.

35 (B) CONTENTS.—A capability statement shall—

36 (i) briefly describe the program participant's various con-  
37 tract performance capabilities; and

38 (ii) include the name and telephone number of the business  
39 opportunity specialist assigned the program participant.

40 (C) STATEMENT CATEGORIES.—The Administrator shall cat-  
41 egorize capability statements as—



(i) statements indicating capability primarily dependent on local contract support; and

(ii) statements indicating capability primarily requiring a national marketing effort.

(D) DISSEMINATION OF CAPABILITY STATEMENTS.—

(i) LOCAL.—The Administrator shall disseminate capability statements described in subparagraph (C)(i) to appropriate contracting activities in the marketing area of each program participant, respectively.

(ii) NATIONAL.—The Administrator shall disseminate capability statements described in subparagraph (C)(ii) to the directors of the offices of small and disadvantaged business utilization for the appropriate Federal agencies, who shall further distribute the capability statements to contracting activities with Federal agencies that may purchase the types of items or services described in the capability statements.

(2) CONTACT BY CONTRACTING ACTIVITIES.—A contracting activity that receives a capability statement of a program participant under paragraph (1)(D) shall, within 60 days after receipt of the capability statement, contact the business opportunity specialist identified in the capability statement to indicate the number, type, and approximate dollar value of contract opportunities that the contracting activity may award over the succeeding 12-month period and that may be appropriate to consider for award to program participants for which the contracting activity has received capability statements.

(3) FORECAST OF CONTRACT OPPORTUNITIES.—

(A) IN GENERAL.—An executive agency that reports to the Federal Procurement Data System contract actions with an aggregate value in excess of \$50,000,000 in any fiscal year shall—

(i) prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that program participants are capable of performing; and

(ii) periodically revise the forecast during the following year.

(B) CONTENTS.—To the extent that the information is available, a forecast under subparagraph (A) shall specify—

(i) the approximate number of individual contract opportunities (and the number of opportunities within a class);

(ii) the approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities;

(iii) the anticipated time (by fiscal year quarter) for the issuance of a procurement request; and

(iv) the activity responsible for the award and administration of the contract.

(C) SUBMISSION OF FORECASTS.—Not later than 10 days after completion of a forecast under subparagraph (A), the head of the executive agency that prepared the forecast shall submit the forecast to—

(i) the director of the office of small and disadvantaged business utilization established under section 251109 of this title for the executive agency; and

(ii) the Administrator.

(D) SCOPE OF INFORMATION REPORTED.—A forecast submitted under subparagraph (C) may be limited to classes of items and services for which there are substantial annual purchases.

(E) AVAILABILITY OF FORECASTS.—A forecast submitted under subparagraph (C) shall be available to small business concerns.

**§ 233113. Percentages of contract performance by program participants**

(a) IN GENERAL.—A program participant may not be awarded a contract under the program unless the program participant agrees that—

(1) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the program participant; and

(2) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the program participant will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

(b) CHANGE IN PERCENTAGE.—

(1) IN GENERAL.—The Administrator may change the percentage under paragraph (1) or (2) of subsection (a) if the Administrator determines that a change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.

(2) LIMITATION.—A percentage established under paragraph (1) may not differ from a percentage established under section 251113 of this title.

(c) OTHER CATEGORIES OF CONTRACT.—

1 (1) IN GENERAL.—The Administrator shall by regulation establish  
2 requirements similar to those specified in subsection (a) to be applica-  
3 ble to—

4 (A) contracts for general and specialty construction; and

5 (B) contracts for any other industry category not otherwise sub-  
6 ject to subsection (a).

7 (2) APPLICABLE PERCENTAGE.—The percentage applicable to a re-  
8 quirement under paragraph (1) shall be determined in accordance with  
9 subsection (b), except that such a percentage may not differ from a  
10 percentage established under section 251113 of this title for the same  
11 industry category.

12 **§ 233114. Wholesalers and retailers**

13 (a) IN GENERAL.—An otherwise responsible small business concern that  
14 is described in subsection (b) shall not be denied the opportunity to submit  
15 and have considered its offer for a procurement contract for the supply of  
16 a product to be let under the program solely because the small business con-  
17 cern is other than the manufacturer or processor of the product to be sup-  
18 plied under the contract.

19 (b) REQUIREMENTS.—A small business concern referred to in subsection  
20 (a) is a small business concern that—

21 (1) is primarily engaged in wholesale or retail trade;

22 (2) is a small business concern under the numerical size standard  
23 for the North American Industry Classification System code assigned  
24 to the contract solicitation on which the offer is being made;

25 (3) is a regular dealer (as defined under section 6510 of title 41)  
26 in the product to be offered the Government; and

27 (4) represents that the small business concern will supply the prod-  
28 uct of a domestic small business manufacturer or processor, unless a  
29 waiver of this paragraph is granted—

30 (A) by the Administrator, after reviewing a determination by  
31 the contracting officer that no small business manufacturer or  
32 processor can reasonably be expected to offer a product meeting  
33 the specifications (including period for performance) required of  
34 an offeror by the solicitation; or

35 (B) by the Administrator for a product (or class of products),  
36 after determining that no small business manufacturer or proc-  
37 essor is available to participate in the Federal procurement mar-  
38 ket.

1   **§ 233.115. Reporting by program participants to business op-**  
2                   **portunity specialists**

3           (a) IN GENERAL.—A program participant shall semiannually submit to  
4   its assigned business opportunity specialist a report identifying each agent,  
5   representative, attorney, accountant, consultant, or other person (other than  
6   an employee of the program participant) that received compensation during  
7   the reporting period to assist the program participant in obtaining a Fed-  
8   eral contract.

9           (b) CONTENTS.—A report under subsection (a) shall—

10           (1) disclose the amount of compensation received by each person  
11           identified in the report during the reporting period; and

12           (2) describe the activities performed for the compensation.

13           (c) REVIEW AND TRANSMITTAL.—The business opportunity specialist  
14   shall promptly—

15           (1) review the report; and

16           (2) transmit the report to the Associate Administrator.

17           (d) SUSPICION OF IMPROPER ACTIVITY.—The Associate Administrator  
18   shall transmit to the Inspector General of SBA any report that raises a sus-  
19   picion of improper activity.

20           (e) FAILURE TO SUBMIT REPORT.—A failure of a program participant  
21   to submit a report under subsection (a) shall constitute good cause for initi-  
22   ation of a termination proceeding under section 233121(b) of this title.

23   **§ 233116. Transfer of ownership or control**

24           (a) IN GENERAL.—

25           (1) PERFORMANCE BY CONTRACT AWARDEE.—A contract (including  
26   options) awarded under the program shall be performed by the pro-  
27   gram participant that is initially awarded the contract.

28           (2) RELINQUISHMENT OF OWNERSHIP OR CONTROL.—

29           (A) IN GENERAL.—Notwithstanding paragraph (1), if the owner  
30   or owners on whom eligibility for award of the contract was based  
31   relinquish ownership or control of the program participant, or  
32   enter into any agreement to relinquish such ownership or control,  
33   the contract or option shall be terminated for the convenience of  
34   the Government.

35           (B) NO DAMAGES.—No repurchase costs or other damages may  
36   be assessed against a program participant due solely to the oper-  
37   ation of subparagraph (A).

38           (b) WAIVER.—

39           (1) IN GENERAL.—The Administrator may waive subsection (a) only  
40   if—

1 (A)(i) it is necessary for the owner of the program participant  
2 to surrender partial control of the program participant on a tem-  
3 porary basis to obtain equity financing; and

4 (ii) the Administrator is requested to waive subsection (a) prior  
5 to the actual transfer of ownership or control;

6 (B)(i) the procuring agency head certifies that termination of  
7 the contract would severely impair attainment of the procuring  
8 agency's program objectives or missions; and

9 (ii) the Administrator is requested to waive subsection (a) prior  
10 to the actual transfer of ownership or control;

11 (C)(i) ownership and control of the program participant will  
12 pass to another program participant; and

13 (ii) the acquiring program participant would otherwise be eligi-  
14 ble to receive the award directly under the program;

15 (D)(i) due to incapacity or death, none of 1 or more individuals  
16 on whom eligibility was based is able to continue to exercise con-  
17 trol of the program participant; and

18 (ii) the Administrator is requested to waive subsection (a) as  
19 soon as possible after the incapacity or death occurs; or

20 (E)(i) to raise equity capital, it is necessary for the disadvan-  
21 tagged owner of the program participant to transfer ownership of  
22 a majority of the voting stock of the program participant;

23 (ii) the program participant has exited the program;

24 (iii) the disadvantaged owner will maintain ownership of the  
25 largest single outstanding block of voting stock (including stock  
26 held by affiliated persons); and

27 (iv) the disadvantaged owner will maintain control of daily busi-  
28 ness operations of the program participant.

29 (2) NONDELEGABILITY.—The authority of the Administrator under  
30 paragraph (1) may not be delegated.

31 (c) NOTIFICATION OF AGREEMENT TO TRANSFER.—The owner of a pro-  
32 gram participant that is performing a contract awarded under the program  
33 shall notify the Administrator immediately on entering into an oral or writ-  
34 ten agreement to transfer all or part of the stock or other ownership inter-  
35 est in the program participant to any other person.

36 (d) TREATMENT OF CERTAIN POTENTIAL OWNERSHIP INTERESTS.—Not-  
37 withstanding any other provision of law, for the purposes of determining  
38 ownership and control of a program participant, any potential ownership in-  
39 terest held by an investment company licensed under subtitle III shall be  
40 treated in the same manner as an interest held by the individuals on whom  
41 eligibility is based.

(e) CONTINUED ELIGIBILITY.—A program participant shall remain eligible for contracts under the program if there is a transfer of ownership and control to individuals whom the Administrator determines to be socially and economically disadvantaged. In the event of such a transfer, the transferee program participant, if not terminated or graduated, shall be eligible for a period of continued participation in the program for the remainder of the program participation period of the transferor.

**§ 233117. Assistance for program participants**

(a) IN GENERAL.—The Administrator shall—

(1) assist program participants in developing and maintaining comprehensive business plans that specify the program participant's specific business targets, objectives, and goals developed and maintained in conformity with section 233118 of this title;

(2) provide for such other nonfinancial services as the Administrator considers necessary for the establishment, preservation, and growth of program participants;

(3) assist program participants in obtaining equity and debt financing;

(4) establish regular performance monitoring and reporting systems for program participants to ensure compliance with their business plans;

(5) analyze and report the causes of success and failure of program participants; and

(6) provide assistance necessary to help program participants procure surety bonds.

(b) NONFINANCIAL SERVICES.—Nonfinancial services provided under subsection (a)(2) may include—

(1) loan packaging;

(2) financial counseling;

(3) accounting and bookkeeping assistance;

(4) marketing assistance; and

(5) management assistance.

(c) SURETY BONDS.—Assistance provided under subsection (a)(6) may include—

(1) assistance in the preparation of application forms required to receive a surety bond;

(2) special management and technical assistance designed to meet the specific needs of program participants that have received or are applying for a surety bond; and

(3) preparation of all forms necessary to receive a surety bond guarantee under chapter 321.

(d) OUTREACH PROGRAM.—

(1) IN GENERAL.—The Administrator shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under the program.

(2) ACTIVITIES.—The outreach program shall make a sustained and substantial effort to solicit applications for certification from—

(A) small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few program participants; and

(B) small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts under the program.

**§ 233118. Business plans**

(a) SUBMISSION.—Promptly after certification under section 233125 of this title, a program participant shall submit a business plan for review by the business opportunity specialist assigned to assist the program participant.

(b) FORM; OBJECTIVE.—A business plan—

(1) may be a revision of a preliminary business plan submitted by the program participant or required by the Administrator as a part of the application for certification under the program; and

(2) shall be designed to result in the elimination by the program participant of the conditions or circumstances on which the Administrator determined eligibility under paragraph (8) or (16) of section 231101 of this title.

(c) APPROVAL OF BUSINESS PLAN AS CONDITION ON CONTRACT AWARD.—Prior approval of a business plan by the business opportunity specialist, and of subsequent modifications submitted under subsection (e), shall be a condition on the eligibility of a program participant for award of a contract under the program.

(d) CONTENTS.—A business plan shall include—

(1) an analysis of market potential, competitive environment, and other business analyses estimating the program participant's prospects for profitable operations during the term of program participation and after graduation;

(2) an analysis of the program participant's strengths and weaknesses, with particular attention to correcting any financial, managerial, technical, or personnel conditions that are likely to impede the program participant in receiving contracts other than contracts awarded under the program;

(3) specific targets, objectives, and goals for the business development of the program participant during the next and succeeding years using the results of the analyses conducted under paragraphs (1) and (2);

(4) a transition management plan outlining specific steps to ensure profitable business operations after graduation (to be incorporated into the program participant's plan during the 1st year of the transitional stage of program participation); and

(5) estimates of contract awards under the program and from other sources that the program participant will require to meet the specific targets, objectives, and goals for the years covered by the business plan, which estimates shall be consistent with section 233128 of this title and other applicable provisions of this chapter.

(e) ANNUAL REVIEW.—

(1) IN GENERAL.—A program participant shall annually review its currently approved business plan with its business opportunity specialist and modify the business plan as appropriate.

(2) APPROVAL.—

(A) SUBMISSION.—A modified business plan shall be submitted to the Administrator for approval.

(B) CONTINUED VALIDITY OF CURRENT PLAN.—The currently approved business plan shall be valid until such time as a modified business plan is approved by the business opportunity specialist.

(3) TRANSITIONAL STAGE.—Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that the program participant has complied with the requirements of section 233128 of this title relating to attaining business activity from sources other than contracts awarded under the program.

(f) ANNUAL NEEDS FORECAST.—

(1) IN GENERAL.—During the review of its plan conducted under subsection (e), a program participant shall annually forecast its needs for contract awards under the program for the next program year and the succeeding program year.

(2) INCLUSION IN BUSINESS PLAN.—An annual needs forecast shall be included in a program participant's business plan.

(3) CONTENTS.—An annual needs forecast shall include—

(A) the aggregate dollar value of contract support to be sought on a noncompetitive basis under the program, reflecting compliance with the requirements of section 233128 of this title relating



1 to attaining business activity from sources other than contracts  
2 awarded under the program;

3 (B) the types of contract opportunities being sought, identified  
4 by North American Industry Classification System code or other-  
5 wise;

6 (C) an estimate of the dollar value of contract support to be  
7 sought on a competitive basis; and

8 (D) such other information the business opportunity specialist  
9 may request to provide effective business development assistance  
10 to the program participant.

11 (g) LOGICAL BUSINESS PROGRESSION.—Limitations established by the  
12 Administrator restricting the award of contracts under the program to a  
13 limited number of North American Industry Classification System codes in  
14 an approved business plan shall not be applied in a manner that inhibits  
15 the logical business progression by a program participant into areas of in-  
16 dustrial endeavor in which the program participant has potential for suc-  
17 cess.

18 **§ 233119. Denial of further assistance**

19 (a) IN GENERAL.—A program participant shall be denied any assistance  
20 under the program if the program participant—

- 21 (1) voluntarily elects not to continue participation;  
22 (2) completes its program participation period;  
23 (3) is graduated; or  
24 (4) is terminated.

25 (b) NO SUBSEQUENT RECERTIFICATION.—If participation in the program  
26 by a program participant is concluded for any of the reasons described in  
27 subsection (a), the former program participant shall not subsequently be re-  
28 certified for participation in the program.

29 **§ 233120. Graduation**

30 A program participant shall be graduated from the program—

- 31 (1) when a program participant successfully completes the program  
32 by substantially achieving the targets, objectives, and goals contained  
33 in the program participant's business plan, thereby demonstrating the  
34 ability of the program participant to compete in the marketplace with-  
35 out assistance under the program; or  
36 (2) if, in a review of economic disadvantage under section 233110(a)  
37 of this title, the Administrator determines that the program participant  
38 and its disadvantaged owners are no longer economically disadvan-  
39 tagged.

40 **§ 233121. Termination**

41 (a) BASIS FOR TERMINATION.—

1 (1) IN GENERAL.—Termination from the program shall be based on  
2 good cause.

3 (2) GOOD CAUSE.—For purposes of paragraph (1), good cause in-  
4 cludes—

5 (A) the failure of a program participant to maintain eligibility  
6 for program participation;

7 (B) the failure of a program participant to engage in business  
8 practices that will promote its competitiveness within a reasonable  
9 period of time as evidenced by, among other indicators, a pattern  
10 of unjustified delinquent performance or terminations for default  
11 with respect to contracts awarded under the program;

12 (C) a demonstrated pattern of failing to make required submis-  
13 sions or responses to the Administrator in a timely manner;

14 (D) the willful violation of any regulation of the Administrator  
15 pertaining to a material issue;

16 (E) the debarment of a program participant or its disadvan-  
17 tagged owners by any agency under subpart 9.4 of title 48, Code  
18 of Federal Regulations (or any successor regulation); and

19 (F) the conviction of the disadvantaged owner or an officer of  
20 a program participant for an offense indicating a lack of business  
21 integrity (including a conviction for embezzlement, theft, forgery,  
22 bribery, falsification, or violation of chapter 105).

23 (3) TERMINATION FOR CONVICTION.—For purposes of paragraph  
24 (2)(F), a termination action shall not be taken with respect to a dis-  
25 advantaged owner of a program participant solely because of the con-  
26 viction of an officer of the program participant (who is not a disadvan-  
27 tagged owner) unless the disadvantaged owner conspired with, abetted,  
28 or otherwise knowingly acquiesced in the activity or omission that was  
29 the basis of the officer's conviction.

30 (b) PROCEDURE.—

31 (1) INITIATION OF PROCEEDING.—The Director may initiate a termi-  
32 nation proceeding by recommending a termination proceeding to the  
33 Associate Administrator.

34 (2) NOTICE OF INTENT TO TERMINATE.—If the Associate Adminis-  
35 trator determines that termination is appropriate, the Associate Admin-  
36 istrator shall, not later than 15 days after making the determination,  
37 provide the program participant written notice of intent to terminate,  
38 specifying the reasons for the termination.

39 **§ 233122. Evaluation of eligibility**

40 (a) IN GENERAL.—The Administrator shall conduct an evaluation of a  
41 program participant's eligibility for continued participation in the program

1 whenever the Administrator receives specific and credible information alleg-  
2 ing that the program participant no longer meets the requirements for pro-  
3 gram eligibility.

4 (b) TERMINATION PROCEEDING.—On making a finding that a program  
5 participant is no longer eligible, the Administrator shall initiate a termi-  
6 nation proceeding under section 233121 of this title.

7 (c) SUSPENSION.—A program participant's eligibility for award of a con-  
8 tract under the program may be suspended under subpart 9.4 of title 48,  
9 Code of Federal Regulations (or any successor regulation).

10 **§ 233123. Limitation of eligibility to 1 small business con-**  
11 **cern**

12 (a) DETERMINATION OF SOCIAL AND ECONOMIC DISADVANTAGE.—Ex-  
13 cept as provided in subsection (c), an individual who was determined to be  
14 socially and economically disadvantaged before August 15, 1989, shall not  
15 be permitted to assert such disadvantage with respect to any other concern  
16 making application for certification as a small business concern owned and  
17 controlled by socially and economically disadvantaged individuals.

18 (b) ELIGIBILITY AS A SOCIALLY AND ECONOMICALLY DISADVANTAGED  
19 SMALL BUSINESS CONCERN.—Except as provided in subsection (c), an indi-  
20 vidual on whom eligibility as a small business concern owned and controlled  
21 by socially and economically disadvantaged individuals is based under sec-  
22 tion 231101(15) of this title shall be permitted to assert such eligibility for  
23 only 1 small business concern.

24 (c) EXCEPTION.—An economically disadvantaged Indian tribe may own  
25 more than 1 small business concern eligible for assistance under the pro-  
26 gram if—

27 (1) the Indian tribe does not own another concern in the same indus-  
28 try that has been determined to be eligible to receive contracts under  
29 the program; and

30 (2) the individuals responsible for the management and daily oper-  
31 ations of the concern do not manage more than 2 program partici-  
32 pants.

33 **§ 233124. Limitation on denial of admission into program**  
34 **based on unavailability of specific contract oppor-**  
35 **tunities**

36 An applicant shall not be denied admission into the program based solely  
37 on a determination that specific contract opportunities are unavailable to as-  
38 sist in the development of the applicant unless—

39 (1) the Government has not previously procured and is unlikely to  
40 procure the types of products or services offered by the applicant; or

1           (2) the purchases of such products or services by the Government  
2           will not be in quantities sufficient to support the developmental needs  
3           of the applicant and other program participants providing the same or  
4           similar products or services.

5   **§ 233125. Certification decision**

6           Not later than 90 days after receipt of a completed application for pro-  
7           gram certification, the Associate Administrator shall—

- 8           (1) certify a small business concern as a program participant; or  
9           (2) deny the application.

10   **§ 233126. Review of new entrants into the program**

11           (a) REVIEW.—Thirty days before the conclusion of each fiscal year, the  
12           Director shall review all small business concerns that have been admitted  
13           into the program during the preceding 12-month period.

14           (b) DETERMINATION AND ESTIMATE.—In a review under subsection (a),  
15           the Director shall—

16           (1) determine the number of entrants and their geographic distribu-  
17           tion and industrial classification; and

18           (2) estimate—

19                (A) the expected growth of the program during the next fiscal  
20                year; and

21                (B) the number of additional business opportunity specialists, if  
22                any, that will be needed to meet the anticipated demand for the  
23                program.

24           (c) REPORT.—Not later than September 30 of each year, the Director  
25           shall report to the Associate Administrator the determination and estimates  
26           made under subsection (b).

27           (d) DIRECTIVES.—

28           (1) IN GENERAL.—Based on the report under subsection (c) and  
29           such additional data as are relevant, the Associate Administrator shall,  
30           not later than October 31 of each fiscal year, issue policy and program  
31           directives applicable to the fiscal year that—

32                (A) establish priorities for the solicitation of program applica-  
33                tions from underrepresented regions and industry categories;

34                (B) assign staffing levels and allocate other program resources  
35                as necessary to meet program needs; and

36                (C) establish priorities in the processing and admission of new  
37                program participants as necessary to achieve an equitable geo-  
38                graphic distribution of small business concerns and a distribution  
39                of concerns across all industry categories in proportions needed to  
40                increase significantly contract awards to small business concerns

1 owned and controlled by socially and economically disadvantaged  
2 individuals.

3 (2) CONSIDERATIONS.—In considering an increase described in para-  
4 graph (1)(C), the Associate Administrator shall give due consideration  
5 to industrial categories in which Federal purchases have been substan-  
6 tial but in which the participation rate of small business concerns  
7 owned and controlled by socially and economically disadvantaged indi-  
8 viduals has been limited.

9 **§ 233127. Program stages**

10 (a) IN GENERAL.—The Administrator shall segment a program partici-  
11 pant's participation in the program into a developmental stage and a transi-  
12 tional stage.

13 (b) DEVELOPMENTAL STAGE.—The developmental stage of program par-  
14 ticipation shall be designed to assist a program participant in its effort to  
15 overcome its economic disadvantage by providing such assistance as is nec-  
16 essary and appropriate to access markets and strengthen its financial and  
17 managerial skills.

18 (c) TRANSITIONAL STAGE.—The transitional stage of program participa-  
19 tion shall be designed to overcome, insofar as practicable, the remaining ele-  
20 ments of economic disadvantage and to prepare a program participant for  
21 graduation from the program.

22 (d) AVAILABLE ASSISTANCE.—

23 (1) IN GENERAL.—A program participant, if otherwise eligible, shall  
24 be qualified to receive assistance as provided in this subsection.

25 (2) CONTRACT SUPPORT.—A program participant in the develop-  
26 mental stage or transitional stage shall be qualified to receive contract  
27 support under the program.

28 (3) FINANCIAL ASSISTANCE.—A program participant in the develop-  
29 mental stage or transitional stage shall be qualified to receive financial  
30 assistance under section 205111 of this title.

31 (4) EMPLOYEE SKILLS TRAINING OR UPGRADING.—

32 (A) DEFINITION OF TRAINING PROVIDER.—In this paragraph,  
33 the term “training provider” means an institution of higher edu-  
34 cation, a community or vocational college, or an institution eligible  
35 to provide skills training or upgrading under title I of the Work-  
36 force Investment Act of 1998 (29 U.S.C. 2801 et seq.).

37 (B) IN GENERAL.—A program participant in the developmental  
38 stage shall be qualified to receive financial assistance under which  
39 the Administrator may, without regard to section 103201(l) of this  
40 title, purchase in whole or in part, on behalf of the program par-

1 participant, skills training or upgrading for employees or potential  
2 employees of the program participant.

3 (C) FORM OF ASSISTANCE.—Financial assistance under sub-  
4 paragraph (B) may be made—

5 (i) by direct payment to the training provider; or

6 (ii) by reimbursing the program participant or the program  
7 participant's employee, if the Administrator considers reim-  
8 bursement to be reasonable and appropriate.

9 (D) LIMITATION.—Financial assistance under subparagraph (B)  
10 shall not be granted to a program participant unless the program  
11 participant first documents that the program participant has ex-  
12 plored the use of existing cost-free or cost-subsidized training pro-  
13 grams offered by public and private sector agencies working with  
14 programs of employment and training and economic development.

15 (E) NUMBER OF EMPLOYEES.—Not more than 5 employees or  
16 potential employees of the program participant are recipients of  
17 skills training or upgrading under subparagraph (B) at any 1  
18 time.

19 (F) AMOUNT.—Not more than \$2,500 shall be made available  
20 for any 1 employee or potential employee for skills training or up-  
21 grading under subparagraph (B).

22 (G) LENGTH OF TRAINING OR UPGRADING.—The length of  
23 training or upgrading financed under subparagraph (B) shall be  
24 not less than 1 nor more than 6 months.

25 (H) LENGTH OF EMPLOYMENT.—

26 (i) ASSURANCES.—Financial assistance under subpara-  
27 graph (B) shall not be granted to a program participant un-  
28 less—

29 (I) the program participant has given adequate assur-  
30 ance that it will employ the trainee or upgraded em-  
31 ployee for a period of at least 6 months after the train-  
32 ing or upgrading financed under subparagraph (B) has  
33 been completed; and

34 (II) each trainee or upgraded employee has given a  
35 similar assurance to remain within the employ of the  
36 program participant for that period.

37 (ii) BREACH.—If a program participant, trainee, or up-  
38 graded employee fails to fulfill the assurance under clause  
39 (i)—

40 (I) the Administrator shall be entitled to, and shall  
41 make diligent efforts to obtain from the violating pro-

1                   gram participant, trainee, or upgraded employee, the re-  
2                   payment of all funds expended on behalf of the program  
3                   participant, trainee, or upgraded employee;

4                   (II) such repayment shall be made to the Adminis-  
5                   trator with such interest and costs of collection as are  
6                   reasonable; and

7                   (III) the program participant, trainee, or upgraded  
8                   employee shall be barred from receiving any further as-  
9                   sistance under subparagraph (B).

10                (I) LOCATION.—Training or upgrading financed under subpara-  
11                graph (B) may take place at a facility of the program participant  
12                or of the training provider.

13                (J) RECORDS.—A program participant that receives assistance  
14                under subparagraph (B) shall maintain such records as the Ad-  
15                ministrator considers appropriate to ensure that this subsection  
16                and any other applicable law have not been violated.

17                (K) REGULATIONS.—The Administrator shall, in consultation  
18                with the Secretary of Labor, promulgate regulations to implement  
19                this paragraph that establish acceptable training and upgrading  
20                performance standards and provide for such monitoring or audit  
21                requirements as are necessary to ensure the integrity of the train-  
22                ing effort.

23       (5) TECHNOLOGY AND SURPLUS PROPERTY TRANSFER.—

24                (A) IN GENERAL.—A program participant in the developmental  
25                stage or transitional stage shall be qualified to receive the transfer  
26                of technology or surplus property owned by the United States.

27                (B) EFFECTUATION.—Activities designed to effect transfers  
28                under subparagraph (A)—

29                   (i) shall be developed in cooperation with the heads of Fed-  
30                   eral agencies; and

31                   (ii) shall include the transfer by grant, license, or sale of  
32                   technology or property to program participants.

33                (C) PRIORITY.—Property under subparagraph (A) may be  
34                transferred to program participants on a priority basis.

35                (D) USE.—Technology or property transferred under subpara-  
36                graph (A)—

37                   (i) shall be used by a program participant during the nor-  
38                   mal conduct of its business operation; and

39                   (ii) shall not be sold or transferred to any other person  
40                   (other than the Government) until 1 year after the program  
41                   participant's term of participation.

(6) TRAINING IN THE DEVELOPMENT OF BUSINESS PRINCIPLES AND STRATEGIES.—A program participant in the developmental stage or transitional stage shall be qualified to receive training assistance under which the Administrator shall conduct training sessions to assist program participants in the development of business principles and strategies to enhance their ability to compete successfully for contracts in the marketplace.

(7) PARTICIPATION IN JOINT VENTURES, LEADER-FOLLOWER ARRANGEMENTS, AND TEAMING AGREEMENTS.—

(A) IN GENERAL.—A program participant in the transitional stage shall be qualified to participate in joint ventures, leader-follower arrangements, and teaming agreements between the program participant and other program participants and other business concerns with respect to contracting opportunities for the research, development, full-scale engineering, or production of major systems.

(B) AGENCY PROGRAMS.—Activities under subparagraph (A) shall be undertaken on the basis of programs developed by the Federal agency responsible for the procurement of the major system, with the assistance of the Administrator.

(8) BUSINESS PLANNING TRAINING AND TECHNICAL ASSISTANCE.—A program participant in the transitional stage shall be qualified to receive transitional management business planning training and technical assistance.

**§ 233128. Attainment of business activity targets**

(a) DEVELOPMENTAL STAGE.—During the developmental stage of participation in the program, a program participant shall take all reasonable efforts within its control to attain the business activity targets contained in its business plan. Those efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administrator that the program participant will engage a reasonable marketing strategy that will maximize its potential to attain its business activity targets.

(b) TRANSITIONAL STAGE.—

(1) IN GENERAL.—During the transitional stage of participation in the program, a program participant shall be subject to regulations regarding business activity targets that are promulgated by the Administrator.

(2) ESTABLISHMENT OF BUSINESS ACTIVITY TARGETS.—The regulations under paragraph (1) shall establish business activity targets applicable to program participants during the 5th year and each succeeding year of program participation. The business activity targets, for



1       that period of time, shall reflect a reasonably consistent increase in  
2       contracts awarded other than under the program, expressed as a per-  
3       centage of total sales.

4       (3) ATTAINMENT.—The regulations under paragraph (1) shall re-  
5       quire a program participant to attain its business activity targets.

6       (4) CERTIFICATION OF COMPLIANCE.—The regulations under para-  
7       graph (1) shall provide that, before the receipt of any contract to be  
8       awarded under the program, the program participant (if it is in the  
9       transitional stage) shall certify that it—

10           (A) has complied with the regulations; or

11           (B) is in compliance with such remedial measures as have been  
12           ordered under regulations promulgated under paragraph (6).

13       (5) PERFORMANCE REVIEW.—The regulations under paragraph (1)  
14       shall require the Administrator to review a program participant's per-  
15       formance regarding attainment of business activity targets during peri-  
16       odic reviews of the program participant's business plan.

17       (6) REMEDIAL MEASURES.—

18           (A) IN GENERAL.—The regulations under paragraph (1) shall  
19           authorize the Administrator to take appropriate remedial measures  
20           with respect to a program participant that fails to attain a re-  
21           quired business activity target for the purpose of reducing the pro-  
22           gram participant's dependence on contracts awarded under the  
23           program.

24           (B) MEASURES.—Remedial measures may include—

25               (i) assisting the program participant in expanding the dol-  
26               lar volume of its competitive business activity; and

27               (ii) limiting the dollar volume of contracts awarded to the  
28               program participant under the program.

29           (C) NONREVIEWABILITY.—Except for a remedial measure that  
30           would constitute a termination, a remedial measure taken under  
31           this paragraph shall not be reviewable under section 233111 of  
32           this title.

33       **§ 233129. Program participation period**

34       A program participant may receive assistance under the program for a  
35       total period of not longer than 9 years, measured from the date of its cer-  
36       tification under section 233125 of this title, of which—

37           (1) not more than 4 years may be spent in the developmental stage  
38           of program participation; and

39           (2) not more than 5 years may be spent in the transitional stage of  
40           program participation.

1    **§ 233130. Collection of data on program operations**

2       The Administrator shall develop and implement a process for the system-  
3       atic collection of data on the operations of the program.

4    **§ 233131. Approval of contract options and modifications**

5       The Administrator shall make substantial and sustained efforts to achieve  
6       a maximum 10-day period as the average processing time for approving op-  
7       tions and modifications to contracts awarded under the program and sub-  
8       mitted to the Administrator for approval.

9    **§ 233132. Orderly and efficient management of program**

10      The Administrator shall, to the maximum extent practicable, minimize  
11      delay, eliminate excess regulation, and require only such paperwork as is  
12      necessary to effect the orderly and efficient management of the program  
13      and the award of contracts under the program.

14   **§ 233133. Participation in federally funded programs and**  
15       **projects**

16      (a) IN GENERAL.—A small business concern that is certified, or otherwise  
17      meets the criteria for participation in any program under the program, shall  
18      not be required by any State or political subdivision of a State to meet addi-  
19      tional criteria or certification, unrelated to the capability to provide the re-  
20      quested product or service, to participate as a small business concern owned  
21      and controlled by socially and economically disadvantaged individuals in any  
22      program or project that is funded, in whole or in part, by the Federal Gov-  
23      ernment.

24      (b) NOTICE OF PARTICIPATION BY THE SECRETARY OF TRANSPORTATION.—The Secretary of Transportation shall notify each State or politi-  
25      cal subdivision of a State to which the Secretary of Transportation awards  
26      a grant or other Federal funds of the criteria for participation by a small  
27      business concern owned and controlled by socially and economically dis-  
28      advantaged individuals in any program or project that is funded, in whole  
29      or in part, by the Federal Government.

31       **Chapter 235—Technical and Management**  
32       **Assistance**

Sec.

235101. Financial assistance for projects providing technical or management assistance.

235102. Eligible projects.

235103. Location of service.

33   **§ 235101. Financial assistance for projects providing tech-**  
34       **nical or management assistance**

35      (a) IN GENERAL.—The Administrator shall provide financial assistance to  
36      public or private organizations to pay all or part of the cost of projects de-  
37      signed to provide technical or management assistance to program partici-

1 pants, with special attention to small business concerns located in areas  
 2 with high proportions of unemployed or low-income individuals.

3 (b) FORM OF ASSISTANCE.—The financial assistance authorized for  
 4 projects under this chapter includes assistance advanced by grant, agree-  
 5 ment, or contract.

6 (c) PAYMENT.—The Administrator may make payments under a grant or  
 7 contract under this chapter in lump sum or installments, and in advance  
 8 or by way of reimbursement, and in the case of grants, with necessary ad-  
 9 justments on account of overpayments or underpayments.

#### 10 **§ 235102. Eligible projects**

11 (a) IN GENERAL.—Financial assistance under this chapter may be pro-  
 12 vided for projects, including projects for—

13 (1) planning and research, including feasibility studies and market  
 14 research;

15 (2) the identification and development of new business opportunities;

16 (3) the furnishing of centralized services with regard to public serv-  
 17 ices and Federal Government programs including the programs author-  
 18 ized under this division and section 205111 of this title;

19 (4) the establishment and strengthening of business service agencies,  
 20 including trade associations and cooperatives; and

21 (5) the furnishing of business counseling, management training, and  
 22 legal and other related services, with special emphasis on the develop-  
 23 ment of management training programs using the resources of the  
 24 business community (including the development of management train-  
 25 ing opportunities in existing business) and with emphasis in all cases  
 26 on providing management training of sufficient scope and duration to  
 27 develop entrepreneurial and managerial self-sufficiency on the part of  
 28 the individuals served.

29 (b) PREFERENCE.—The Administrator shall give preference to projects  
 30 that promote the ownership, participation in ownership, or management of  
 31 small business concerns owned by program participants.

#### 32 **§ 235103. Location of service**

33 To the extent feasible, service under this chapter shall be provided in a  
 34 location that is easily accessible to the program participants served.

## 35 **Division G—Procurement Assistance** 36 **Chapter 241—General Provisions**

Sec.

241101. Definition of executive agency.

241102. Authority.

241103. Technical, managerial, and informational aids.

241104. Inventory of productive facilities.

241105. Utilization of productive capacity.

241106. Subcontracting to small business concerns.

241107. Size certification.

- 241108. Responsibility certification.
- 241109. Information pertaining to Federal procurement or production.
- 241110. Information pertaining to disposal of Federal property.
- 241111. Information pertaining to supplies of materials.
- 241112. Fair proportions of business for small business concerns.
- 241113. Fair and reasonable treatment of small business concerns.
- 241114. Information and assistance pertaining to federally aided urban renewal projects.
- 241115. Dissemination of information by the Administrator.
- 241116. Availability of information from Federal agencies.
- 241117. Adjustment of regulations and programs to the needs of small business concerns.
- 241118. Outreach programs for disabled veterans, veterans, and reservists.
- 241119. Consolidation of contract requirements.

1     **§ 241101. Definition of executive agency**

2         In this division, the term "executive agency" has the meaning given the  
3     term in section 133 of title 41.

4     **§ 241102. Authority**

5         The Administrator shall take an action under this chapter when the Ad-  
6     ministrator determines that the action is necessary.

7     **§ 241103. Technical, managerial, and informational aids**

8         (a) IN GENERAL.—

9             (1) ACTIVITIES.—The Administrator shall provide technical, manage-  
10         rial, and informational aids to small business concerns—

11                 (A) by advising and counseling on matters in connection with  
12                 Government procurement and policies, principles, and practices of  
13                 good management;

14                 (B) by cooperating and advising with—

15                         (i) voluntary business, professional, educational, and other  
16                         nonprofit organizations, associations, and institutions; and

17                         (ii) other Federal and State agencies;

18                 (C) by maintaining a clearinghouse for information on manag-  
19                 ing, financing, and operating small business concerns; and

20                 (D) by disseminating such information, including through rec-  
21                 ognition events, and by other activities that the Administrator de-  
22                 termines to be appropriate.

23             (2) NO ENDORSEMENT; APPROPRIATE RECOGNITION.—In cooperat-  
24     ing and advising with an entity under paragraph (1)(B)(i), the Admin-  
25     istrator shall take such actions as the Administrator determines to be  
26     necessary to ensure that—

27                 (A) the cooperation does not constitute or imply an endorsement  
28                 by the Administrator of the entity or its products or services; and

29                 (B) SBA receives appropriate recognition in all printed mate-  
30     rial.

31             (3) FOR-PROFIT CONCERNS.—The Administrator may provide tech-  
32     nical, managerial, and informational aids to small business concerns  
33     through cooperation with a for-profit concern (referred to in this para-  
34     graph as a "cosponsor") if the Administrator—

(A) takes such action as the Administrator determines to be appropriate to ensure that—

- (i) SBA receives appropriate recognition and publicity;
- (ii) the cooperation does not constitute or imply an endorsement by the Administrator of any product or service of the cosponsor;
- (iii) unnecessary promotion of the products or services of the cosponsor is avoided; and
- (iv) the use of any 1 cosponsor in a marketing area is minimized; and

(B) develops an agreement, executed on behalf of the Administrator by an employee of SBA in Washington, the District of Columbia, that, at a minimum—

- (i) specifies the terms and conditions of the cooperation; and
- (ii) provides that—

(I) any printed material to announce the cosponsorship or to be distributed at the cosponsored activity shall be approved in advance by the Administrator;

(II) only minimal charges may be imposed on any small business concern to cover the direct costs of providing the assistance;

(III) the Administrator may provide to the cosponsor mailing labels but not lists of names and addresses of small business concerns compiled by the Administrator;

(IV) all printed materials containing the names of both SBA and the cosponsor shall include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administrator of any product or service of the cosponsor; and

(V) SBA shall receive appropriate recognition in all cosponsorship printed materials.

(b) VOLUNTEER PROGRAMS.—

(1) IN GENERAL.—In carrying out this section, the Administrator shall establish, conduct, and publicize, and recruit, select, and train volunteers for, and enter into contracts, grants, or cooperative agreements for, volunteer programs, including SCORE and an Active Corps of Executives for the purposes of subsection (a).

(2) STAFF.—To facilitate the implementation of the volunteer programs, the Administrator shall, to the extent and in such amounts as are provided in advance in appropriation Acts, maintain at SBA head-

quarters, and pay the salaries, benefits, and expenses of, a volunteer and professional staff to manage and oversee the volunteer programs.

(3) CONTRIBUTIONS.—Notwithstanding any other provision of law, SCORE may—

(A) solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this subtitle; and

(B) use payments made by the Administrator under this subsection for such solicitation and management of the contributions received.

(e) USE OF SBA FACILITIES.—The Administrator shall allow any individual or group of persons participating with the Administrator in furtherance of this section to use such of SBA's office facilities and related material and services (including clerical and stenographic services) as the Administrator considers appropriate.

(d) VOLUNTEERS DEEMED TO BE FEDERAL EMPLOYEES FOR FEDERAL TORT CLAIMS PURPOSES.—A volunteer, while carrying out an activity under this section, shall be deemed to be a Federal employee for purposes of chapter 171 of title 28.

(e) VOLUNTEERS DEEMED TO BE CIVIL EMPLOYEES FOR WORK INJURY COMPENSATION PURPOSES.—A volunteer, while carrying out an activity under this section, shall, for purposes of subchapter I of chapter 81 of title 5 (relative to compensation to Federal employees for work injuries), be deemed to be a civil employee of the United States within the meaning of the term “employee” as defined in section 8101 of title 5, and that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed to be that received under the entrance salary for a grade GS–11 employee.

(f) REIMBURSEMENT OF VOLUNTEERS.—

(1) IN GENERAL.—The Administrator may reimburse a volunteer carrying out an activity under this section for—

(A) all necessary out-of-pocket expenses incident to the volunteer's provision of services under this subtitle, or in connection with attendance at a meeting sponsored by SBA;

(B) the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations that the Administrator shall prescribe; and

(C) travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for individuals serving without pay, while the volunteer is carrying out such an activity away from the volunteer's home or regular place of business.

1           (2) TREATMENT OF PAYMENTS.—Notwithstanding any other provi-  
2           sion of law, no payment for supportive services or reimbursement of  
3           out-of-pocket expenses made to a volunteer serving under this section  
4           shall be subject to any tax or charge or be treated as wages or com-  
5           pensation for the purposes of unemployment, disability, retirement,  
6           public assistance, or similar benefit payments, or minimum wage laws.

7           (g) LIMITATION ON PROVISION OF SERVICES TO PERSONS WITH A DE-  
8           LINQUENT LOAN.—A volunteer carrying out an activity under this section  
9           shall not provide any service to a person with a loan under this subtitle that  
10          is delinquent except on a specific request for assistance signed by the person  
11          in connection with the delinquency.

12          (h) GRANTS FOR BUSINESS COUNSELING AND ASSISTANCE.—

13           (1) IN GENERAL.—In carrying out this section, the Administrator  
14           may make a grant to, or enter into a contract or cooperative agreement  
15           with, a public or private institution of higher education for the estab-  
16           lishment and operation of a small business institute, which shall be  
17           used to provide business counseling and assistance to small business  
18           concerns through the activities of students enrolled at the institution.

19           (2) EDUCATIONAL CREDITS.—A student engaged in an activity fund-  
20           ed under paragraph (1) shall be entitled to receive educational credit  
21           for the activity.

22           (i) PAYMENT OF EXPENSES IN JUDICIAL OR ADMINISTRATIVE PROCEED-  
23           INGS.—Notwithstanding any other provision of law and in accordance with  
24           regulations that the Administrator shall prescribe, in a judicial or adminis-  
25           trative proceeding arising directly out of the performance of an activity  
26           under this section to which a volunteer is made a party, the Administrator  
27           may employ counsel and pay counsel fees, court costs, bail, and other ex-  
28           penses incidental to the defense of the volunteer.

29          **§ 241104. Inventory of productive facilities**

30           (a) IN GENERAL.—The Administrator shall—

31           (1) make a complete inventory of all productive facilities of small  
32           business concerns; or

33           (2) arrange for such an inventory to be made by any other govern-  
34           mental agency that has the facilities.

35           (b) INFORMATION FROM STATE AGENCIES.—In making an inventory  
36           under subsection (a), the Administrator or other governmental agency may  
37           request an appropriate agency of a State to furnish an inventory of the pro-  
38           ductive facilities of small business concerns in the State if such an inventory  
39           is available or in prospect.

40          **§ 241105. Utilization of productive capacity**

41           The Administrator shall—

1 (1) coordinate and ascertain the means by which the productive ca-  
2 pacity of small business concerns can be most effectively utilized; and

3 (2) consult and cooperate with officers of the Government having  
4 procurement or property disposal powers, in order to utilize the poten-  
5 tial productive capacity of plants operated by small business concerns.

6 **§ 241106. Subcontracting to small business concerns**

7 The Administrator shall—

8 (1) obtain information concerning methods and practices that Gov-  
9 ernment prime contractors utilize in letting subcontracts; and

10 (2) take action to encourage the letting of subcontracts by prime  
11 contractors to small business concerns at prices and on terms and con-  
12 ditions that are fair and equitable.

13 **§ 241107. Size certification**

14 (a) IN GENERAL.—The Administrator shall determine within any indus-  
15 try the concerns that qualify as a small business concern for purposes of  
16 this subtitle.

17 (b) ISSUANCE OF CERTIFICATE.—When requested to do so, the Adminis-  
18 trator shall issue a certificate certifying a concern as a small business con-  
19 cern in accordance with the criteria stated in this subtitle and section  
20 101102 of this title.

21 (c) REVOCATION OF CERTIFICATE.—A certificate issued under subsection  
22 (b) shall be subject to revocation when the concern covered by the certificate  
23 ceases to qualify as a small business concern.

24 (d) CONCLUSIVE DETERMINATION.—An officer of the Government having  
25 procurement or lending power, or engaging in the disposal of Federal prop-  
26 erty or allocating materials or supplies, or promulgating regulations affect-  
27 ing the distribution of materials or supplies, shall accept as conclusive the  
28 Administrator's determination whether a concern qualifies as a small busi-  
29 ness concern.

30 **§ 241108. Responsibility certification**

31 (a) DEFINITIONS.—In this section:

32 (1) CONTRACTING OFFICER.—The term “contracting officer”  
33 means—

34 (A) a contracting officer; and

35 (B) any other officer engaged in the sale and disposal of Fed-  
36 eral property.

37 (2) RESPONSIBILITY.—The term “responsibility” includes capability,  
38 competency, capacity, credit, integrity, perseverance, and tenacity.

39 (b) CERTIFICATION.—The Administrator shall certify to a contracting of-  
40 ficer with respect to all elements of the responsibility of a small business



1 concern or group of small business concerns to receive and perform a spe-  
2 cific Government contract.

3 (c) NO PRECLUSION FROM AWARD OF CONTRACT WITHOUT REFERRAL  
4 TO THE ADMINISTRATOR.—A contracting officer may not, for any reason  
5 relating to an element of responsibility as determined under subsection (b),  
6 preclude a small business concern or group of small business concerns from  
7 being awarded a contract without referring the matter for a final disposition  
8 to the Administrator.

9 (d) CONCLUSIVE DETERMINATION.—A contracting officer shall—

10 (1) accept as conclusive a certification made under subsection (b) as  
11 to the specific Government contract with respect to which the certifi-  
12 cation is made; and

13 (2) let the contract to the small business concern or group of small  
14 business concerns without requiring the small business concern or  
15 group of small business concerns to meet any other requirement of re-  
16 sponsibility or eligibility.

17 (e) NO EXEMPTION.—The Administrator may not establish an exemption  
18 from referral or notification or refuse to accept a referral or notification  
19 from a contracting officer made under subsection (c), but nothing in this  
20 section requires the processing of an application for certification if the small  
21 business concern to which the referral pertains declines to have the applica-  
22 tion processed.

23 **§ 241109. Information pertaining to Federal procurement or**  
24 **production**

25 The Administrator shall obtain from any Federal agency engaged in pro-  
26 curement or in the financing of procurement or production such reports con-  
27 cerning the letting of contracts and subcontracts and the making of loans  
28 to business concerns as the Administrator considers pertinent in carrying  
29 out the functions of the Administrator under this subtitle and subtitle I.

30 **§ 241110. Information pertaining to disposal of Federal**  
31 **property**

32 The Administrator shall obtain from any Federal agency engaged in the  
33 disposal of Federal property such reports concerning the solicitation of bids,  
34 time of sale, or otherwise as the Administrator considers pertinent in carry-  
35 ing out the functions of the Administrator under this subtitle and subtitle  
36 I.

37 **§ 241111. Information pertaining to supplies of materials**

38 The Administrator shall obtain from suppliers of materials information  
39 pertaining to the method of filling orders for materials, and the bases for  
40 allocating their supplies of materials, when it appears that a small business  
41 concern is unable to obtain material from its normal sources.

1    **§ 241112. Fair proportions of business for small business**  
2                   **concerns**

3           The Administrator shall make studies and recommendations to the appro-  
4    priate Federal agencies to ensure that—

5           (1) a fair proportion of the total purchases and contracts for prop-  
6           erty and services for the Government is placed with small business con-  
7           cerns;

8           (2) a fair proportion of Government contracts for research and devel-  
9           opment is placed with small business concerns;

10          (3) a fair proportion of the total sales of Government property is  
11          made to small business concerns; and

12          (4) a fair and equitable share of materials, supplies, and equipment  
13          is available to small business concerns.

14    **§ 241113. Fair and reasonable treatment of small business**  
15                   **concerns**

16          The Administrator shall consult and cooperate with all Federal agencies  
17          for the purpose of ensuring that small business concerns receive fair and  
18          reasonable treatment from Federal agencies.

19    **§ 241114. Information and assistance pertaining to federally**  
20                   **aided urban renewal projects**

21          The Administrator shall provide at the earliest practicable time such in-  
22          formation and assistance as are appropriate (including information concern-  
23          ing eligibility for loans under section 221103 of this title) to local public  
24          agencies (as defined in section 110(h) of the Housing Act of 1949 (42  
25          U.S.C. 1460(h))) and to small business concerns to be displaced by federally  
26          aided urban renewal projects in order to assist the small business concerns  
27          in reestablishing operations.

28    **§ 241115. Dissemination of information by the Administrator**

29          (a) IN GENERAL.—The Administrator shall disseminate, without regard  
30          to section 3204 of title 39, information, in such form as the Administrator  
31          considers appropriate, to public agencies, private organizations, and the gen-  
32          eral public.

33          (b) INFORMATION ON FEDERAL PROCUREMENT PRACTICES.—The Ad-  
34          ministrator shall, for each fiscal year—

35           (1) collect information concerning the procurement practices and  
36           procedures of each Federal agency having procurement authority;

37           (2) publish and disseminate the information to contracting officers  
38           in all Federal agencies; and

39           (3) make the information available to any small business concern  
40           that requests the information.

**§ 241116. Availability of information from Federal agencies**

(a) REQUESTS FOR INFORMATION.—For any contract to be let by any Federal agency, the Federal agency shall provide to any small business concern, on request by the small business concern—

(1) a copy of bid sets and specifications with respect to the contract;

(2) the name and telephone number of an employee of the Federal agency to answer questions with respect to the contract; and

(3) adequate citations to each major Federal law (including a regulation) with which the small business concern must comply in performing the contract.

(b) EXEMPT CONTRACTS.—Subsection (a) does not apply to a contract (or subcontract) that—

(1) will be performed entirely outside the United States; or

(2) is for services that are personal in nature.

**§ 241117. Adjustment of regulations and programs to the needs of small business concerns**

The Administrator shall—

(1) make studies of matters materially affecting the competitive strength of small business concerns and of the effect on small business concerns of Federal laws (including regulations) and programs; and

(2) make recommendations to Federal agencies as appropriate for the adjustment of regulations and programs to the needs of small business concerns.

**§ 241118. Outreach programs for disabled veterans, veterans, and reservists**

(a) IN GENERAL.—The Administrator shall make grants to, and enter into contracts and cooperative agreements with, educational institutions, private businesses, veterans' nonprofit community-based organizations, and Federal agencies and State and local agencies for the establishment and implementation of outreach programs for disabled veterans, veterans, and reservists.

(b) INCREASE IN NUMBER OF VETERANS BUSINESS OUTREACH CENTERS.—The Administrator shall use the authority under subsection (a) to ensure that the number of veterans business outreach centers throughout the United States increases by the number that the Administrator considers appropriate, based on need, for each fiscal year.

**§ 241119. Consolidation of contract requirements**

(a) DEFINITIONS.—In this section:

(1) CHIEF ACQUISITION OFFICER.—The term “Chief Acquisition Officer” means the employee of a Federal agency designated as the Chief

1 Acquisition Officer for the Federal agency under section 1702 of title  
2 41.

3 (2) CONSOLIDATION OF CONTRACT REQUIREMENTS.—The term  
4 “consolidation of contract requirements”, with respect to contract re-  
5 quirements of a Federal agency, means a use of a solicitation to obtain  
6 offers for a single contract or a multiple award contract to satisfy 2  
7 or more requirements of the Federal agency for goods or services that  
8 have been provided to or performed for the Federal agency under 2 or  
9 more separate contracts lower in cost than the total cost of the contract  
10 for which the offers are solicited.

11 (3) SENIOR PROCUREMENT EXECUTIVE.—The term “senior procure-  
12 ment executive” means an official designated under section 1702(c) of  
13 title 41 as the senior procurement executive for a Federal agency.

14 (b) DECISIONS REGARDING CONSOLIDATION OF CONTRACT REQUIRE-  
15 MENTS.—The head of a Federal agency shall ensure that the decisions made  
16 by the Federal agency regarding consolidation of contract requirements of  
17 the Federal agency are made with a view to providing small business con-  
18 cerns with appropriate opportunities to participate as prime contractors and  
19 subcontractors in the procurements of the Federal agency.

20 (c) LIMITATION ON USE OF ACQUISITION STRATEGIES INVOLVING CON-  
21 SOLIDATION.—

22 (1) IN GENERAL.—Subject to paragraph (4), the head of a Federal  
23 agency shall not carry out an acquisition strategy that includes a con-  
24 solidation of contract requirements of the Federal agency with a total  
25 value of more than \$2,000,000 unless the senior procurement executive  
26 or Chief Acquisition Officer for the Federal agency, before carrying out  
27 the acquisition strategy—

28 (A) conducts market research;

29 (B) identifies any alternative contracting approaches that would  
30 involve a lesser degree of consolidation of contract requirements;

31 (C) makes a written determination that the consolidation of con-  
32 tract requirements is necessary and justified;

33 (D) identifies any negative impact by the acquisition strategy on  
34 contracting with small business concerns; and

35 (E) certifies to the head of the Federal agency that steps will  
36 be taken to include small business concerns in the acquisition  
37 strategy.

38 (2) DETERMINATION THAT CONSOLIDATION IS NECESSARY AND JUS-  
39 TIFIED.—

40 (A) IN GENERAL.—A senior procurement executive or Chief Ac-  
41 quisition Officer may determine that an acquisition strategy in-

volving a consolidation of contract requirements is necessary and justified for the purposes of paragraph (1)(C) if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under paragraph (1)(B).

(B) SAVINGS IN ADMINISTRATIVE OR PERSONNEL COSTS.—For purposes of subparagraph (A), savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements in a procurement unless the expected total amount of the cost savings, as determined by the senior procurement executive or Chief Acquisition Officer, is expected to be substantial in relation to the total cost of the procurement.

(3) BENEFITS TO BE CONSIDERED.—The benefits considered for the purposes of paragraphs (1) and (2) may include—

(A) cost; and

(B) regardless of whether quantifiable in dollar amounts—

(i) quality;

(ii) acquisition cycle;

(iii) terms and conditions; and

(iv) any other benefit.

(4) DEPARTMENT OF DEFENSE.—

(A) IN GENERAL.—The Secretary of Defense and the Secretary of each military department shall comply with this section until after the date described in subparagraph (C).

(B) RULE.—After the date described in subparagraph (C), contracting by the Secretary of Defense or the Secretary of a military department shall be conducted in accordance with section 2382 of title 10.

(C) DATE.—The date described in this subparagraph is the date on which the Administrator determines that the Secretary of Defense or the Secretary of a military department is in compliance with the Governmentwide contracting goals under chapter 251.

## Chapter 243—Subcontracting Provisions

Sec.

243101. Opportunity to participate in performance of contracts.

243102. Notice of provisions relating to contracts awarded pursuant to the negotiated method of procurement.

243103. Subcontracting plans.

243104. Incentives.

243105. Liquidated damages.

243106. Payment of subcontractors.

243107. Subcontracting misrepresentations.

243108. Material breach.

243109. Effect of chapter.

1    **§ 243101. Opportunity to participate in performance of con-**  
2                   **tracts**

3           (a) IN GENERAL.—The clause stated in subsection (c) shall be included  
4    in all contracts let by a Federal agency except a contract described in sub-  
5    section (b).

6           (b) EXCEPTED CONTRACTS.—The clause stated in subsection (c) need not  
7    be included in—

8               (1) a contract that does not exceed the simplified acquisition thresh-  
9               old;

10              (2) a contract (including all subcontracts under the contract) that  
11              will be performed entirely outside the United States; or

12              (3) a contract for a service that is personal in nature.

13           (c) REQUIRED CLAUSE.—The clause required by subsection (a) is as fol-  
14    lows:

15               “(1) DEFINITIONS.—

16                   “(A) IN GENERAL.—As used in this contract, each of the terms  
17                   ‘qualified HUBZone small business concern’, ‘small business con-  
18                   cern’, ‘small business concern owned and controlled by service-dis-  
19                   abled veterans’, ‘small business concern owned and controlled by  
20                   socially and economically disadvantaged individuals’, ‘small busi-  
21                   ness concern owned and controlled by veterans’, and ‘small busi-  
22                   ness concern owned and controlled by women’ has the meaning  
23                   given the term in section 101102 of title 53, United States Code.

24                   “(B) PRESUMPTION.—For purposes of applying the definition  
25                   of ‘small business concern owned and controlled by socially and  
26                   economically disadvantaged individuals’, the contractor shall pre-  
27                   sume that socially and economically disadvantaged individuals in-  
28                   clude Black Americans, Hispanic Americans, Native Americans,  
29                   Asian Pacific Americans, and other minorities, or any other indi-  
30                   vidual found to be disadvantaged by the United States Small Busi-  
31                   ness Administration.

32               “(2) POLICY.—It is the policy of the United States that qualified  
33    HUBZone small business concerns, small business concerns owned and  
34    controlled by service-disabled veterans, small business concerns owned  
35    and controlled by socially and economically disadvantaged individuals,  
36    small business concerns owned and controlled by veterans, small busi-  
37    ness concerns owned and controlled by women, and other small busi-  
38    ness concerns shall have the maximum practicable opportunity to par-  
39    ticipate in the performance of contracts let by any Federal agency, in-  
40    cluding contracts and subcontracts for subsystems, assemblies, compo-  
41    nents, and related services for major systems. It is further the policy

of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans, small business concerns owned and controlled by women, and other small business concerns.

“(3) AGREEMENT.—The contractor agrees—

“(A) to carry out the policy stated in paragraph (2) in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract; and

“(B) to cooperate in any studies or surveys that may be conducted by the United States Small Business Administration or the awarding agency of the United States as necessary to determine the extent of the contractor’s compliance with this clause.

“(4) RELIANCE ON WRITTEN REPRESENTATION.—The contractor, acting in good faith, may rely on a written representation by a subcontractor regarding its status as a qualified HUBZone small business concern, small business concern owned and controlled by service-disabled veterans, small business concern owned and controlled by socially and economically disadvantaged individuals, small business concern owned and controlled by veterans, small business concern owned and controlled by women, or other small business concern.”

**§ 243102. Notice of provisions relating to contracts awarded pursuant to the negotiated method of procurement**

(a) REQUIRED CLAUSE.—A solicitation of an offer for a contract described in subsection (b) shall contain a clause notifying potential offering companies of the provisions of this chapter relating to contracts awarded pursuant to the negotiated method of procurement.

(b) CONTRACTS.—A contract referred to in subsection (a) is a contract let by a Federal agency that—

(1) is to be awarded pursuant to the negotiated method of procurement; and

(2) may exceed—

(A) \$1,000,000, in the case of a contract for the construction of a public facility; or

(B) \$500,000, in the case of any other contract.

**§ 243103. Subcontracting plans**

(a) DEFINITIONS.—In this section:

1 (1) BIDDER.—The term “bidder” does not include a bidder that is  
2 a small business concern.

3 (2) OFFEROR.—The term “offeror” does not include an offeror that  
4 is a small business concern.

5 (b) NEGOTIATED PROCUREMENTS.—

6 (1) NEGOTIATION.—Before the award of any contract described in  
7 paragraph (2), or any amendment or modification to such a contract,  
8 the apparent successful offeror shall negotiate with the procurement  
9 authority a subcontracting plan that incorporates the information pre-  
10 scribed in subsection (d).

11 (2) CONTRACTS.—A contract referred to in paragraph (1) is a con-  
12 tract let by a Federal agency that—

13 (A) is to be (or was) awarded pursuant to the negotiated meth-  
14 od of procurement;

15 (B) is required to include the clause stated in section 243101  
16 of this title;

17 (C) may exceed—

18 (i) \$1,000,000, in the case of a contract for the construc-  
19 tion of a public facility; or

20 (ii) \$500,000, in the case of any other contract; and

21 (D) offers a subcontracting possibility.

22 (3) INCLUSION IN CONTRACT.—The subcontracting plan shall be in-  
23 cluded in and made a material part of the contract.

24 (4) FAILURE TO NEGOTIATE SUBCONTRACTING PLAN.—If, within the  
25 time prescribed in regulations of the procuring agency, the apparent  
26 successful offeror fails to negotiate the subcontracting plan required by  
27 paragraph (2), the offeror shall be ineligible to be awarded the con-  
28 tract.

29 (5) PRIOR COMPLIANCE A FACTOR IN DETERMINING RESPONSIBIL-  
30 ITY.—Prior compliance of the offeror with other subcontracting plans  
31 under this subsection shall be considered by a procuring agency in de-  
32 termining the responsibility of the offeror for the award of the contract.

33 (6) MAXIMUM OPPORTUNITY.—No contract shall be awarded to any  
34 offeror unless the procuring agency determines that the subcontracting  
35 plan to be negotiated by the offeror under paragraph (2) provides the  
36 maximum practicable opportunity for qualified HUBZone small busi-  
37 ness concerns, small business concerns owned and controlled by service-  
38 disabled veterans, small business concerns owned and controlled by so-  
39 cially and economically disadvantaged individuals, small business con-  
40 cerns owned and controlled by veterans, small business concerns owned



1 and controlled by women, and other small business concerns, to partici-  
2 pate in the performance of the contract.

3 (c) ADVERTISED PROCUREMENTS.—

4 (1) REQUIRED CLAUSE.—A solicitation of a bid for a contract de-  
5 scribed in paragraph (2), or any amendment or modification to such  
6 a contract, shall contain a clause requiring any bidder that is selected  
7 to be awarded a contract to submit to the procuring agency a sub-  
8 contracting plan that incorporates the information prescribed in sub-  
9 section (d).

10 (2) CONTRACTS.—A contract referred to in paragraph (1) is a con-  
11 tract let by a Federal agency that—

12 (A) is to be awarded pursuant to the formal advertising method  
13 of procurement;

14 (B) is required to contain the clause stated in section 243101  
15 of this title;

16 (C) may exceed—

17 (i) \$1,000,000, in the case of a contract for the construc-  
18 tion of a public facility; or

19 (ii) \$500,000, in the case of any other contract; and

20 (D) offers a subcontracting possibility.

21 (3) INCLUSION IN CONTRACT.—The subcontracting plan of the bid-  
22 der awarded the contract shall be included in and made a material part  
23 of the contract.

24 (4) FAILURE TO SUBMIT SUBCONTRACTING PLAN.—If, within the  
25 time prescribed in regulations of the procuring agency, the bidder se-  
26 lected to be awarded the contract fails to submit the subcontracting  
27 plan required by paragraph (1), the bidder shall become ineligible to  
28 be awarded the contract.

29 (5) PRIOR COMPLIANCE A FACTOR IN DETERMINING RESPONSIBIL-  
30 ITY.—Prior compliance of the bidder with other subcontracting plans  
31 under this subsection shall be considered by the procuring agency in  
32 determining the responsibility of the bidder for the award of the con-  
33 tract.

34 (d) CONTENTS OF SUBCONTRACTING PLAN.—A subcontracting plan shall  
35 include—

36 (1) percentage goals for the utilization as subcontractors of qualified  
37 HUBZone small business concerns, small business concerns owned and  
38 controlled by service-disabled veterans, small business concerns owned  
39 and controlled by socially and economically disadvantaged individuals,  
40 small business concerns owned and controlled by veterans, small busi-

1       ness concerns owned and controlled by women, and other small busi-  
2       ness concerns;

3       (2) the name of an individual within the employ of the offeror or  
4       bidder who will administer the subcontracting program of the offeror  
5       or bidder and a description of the duties of that individual;

6       (3) a description of the efforts that the offeror or bidder will take  
7       to ensure that qualified HUBZone small business concerns, small busi-  
8       ness concerns owned and controlled by service-disabled veterans, small  
9       business concerns owned and controlled by socially and economically  
10      disadvantaged individuals, small business concerns owned and con-  
11      trolled by veterans, small business concerns owned and controlled by  
12      women, and other small business concerns will have an equitable oppor-  
13      tunity to compete for subcontracts;

14      (4) assurances that the offeror or bidder will—

15          (A) include the clause required by section 243101 of this title  
16          in all subcontracts that offer further subcontracting opportunities;  
17          and

18          (B) require all subcontractors (except small business concerns)  
19          that receive subcontracts in excess of \$1,000,000 in the case of  
20          a contract for the construction of a public facility, or in excess of  
21          \$500,000 in the case of any other contract, to adopt a sub-  
22          contracting plan similar to the subcontracting plan required under  
23          subsection (b) or (c);

24      (5) assurances that the offeror or bidder will submit such periodic  
25      reports and cooperate in any studies or surveys as may be required by  
26      the procuring agency or the Administrator to determine the extent of  
27      compliance by the offeror or bidder with the subcontracting plan;

28      (6) a recitation of—

29          (A) the types of records that the successful offeror or bidder will  
30          maintain to demonstrate procedures that are adopted to comply  
31          with the requirements and goals set forth in the subcontracting  
32          plan, including the establishment of source lists of qualified HUB-  
33          Zone small business concerns, small business concerns owned and  
34          controlled by service-disabled veterans, small business concerns  
35          owned and controlled by socially and economically disadvantaged  
36          individuals, small business concerns owned and controlled by veter-  
37          ans, small business concerns owned and controlled by women, and  
38          other small business concerns; and

39          (B) efforts to identify and award subcontracts to small business  
40          concerns; and

41      (7) a representation that the offeror or bidder will—

(A) make a good faith effort to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal; and

(B) provide to the contracting officer a written explanation if the offeror or bidder fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in subparagraph (A).

(e) ATTAINMENT OF GOALS.—

(1) ATTAINABILITY OF GOALS.—A Federal agency shall ensure that the goals offered by an apparent successful bidder or offeror are attainable in relation to—

(A) the subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

(B) the pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(C) the actual performance of the contractor in fulfilling the subcontracting goals specified in prior subcontracting plans.

(2) CREDIT FOR DEVELOPMENT ASSISTANCE.—For purposes of determining the attainment of a subcontract utilization goal under a subcontracting plan entered into with an executive agency under subsection (b) or (c), a mentor firm that provides development assistance to a protégé firm under the pilot Mentor-Protégé Program established pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) shall be granted credit for the assistance in accordance with subsection (g) of that section.

(f) BUNDLED CONTRACTS.—The following factors shall be designated by a Federal agency as significant factors for purposes of evaluating offers for a bundled contract if the head of the Federal agency determines that the contract offers a significant opportunity for subcontracting:

(1) A factor that is based on the rate provided under the subcontracting plan for small business participation in the performance of the contract.

(2) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(g) COMPLIANCE ASSISTANCE.—The Administrator may—

(1) assist Federal agencies and businesses in complying with their responsibilities under this section, including the formulation of subcontracting plans;

(2)(A) review any solicitation for any contract to be let under subsection (b) or (c) to determine the maximum practicable opportunity for qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by women, and other small business concerns to participate as subcontractors in the performance of any contract resulting from any solicitation; and

(B) submit findings, which shall be advisory in nature, to the procuring agency; and

(3) evaluate compliance with subcontracting plans—

(A) on a contract-by-contract basis; or

(B) in the case of a contractor having multiple contracts, on an aggregate basis.

#### **§ 243104. Incentives**

Notwithstanding any other provision of law, a Federal agency, to encourage subcontracting opportunities for qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans, small business concerns owned and controlled by women, and other small business concerns, may provide such incentives as the Federal agency considers appropriate to encourage such subcontracting opportunities as are commensurate with the efficient and economical performance of a contract that is let pursuant to the negotiated method of procurement.

#### **§ 243105. Liquidated damages**

(a) REQUIRED CLAUSE.—

(1) IN GENERAL.—A contract subject to subsection (b) or (c) of section 243103 of this title shall contain a clause for the payment of liquidated damages on a finding that a prime contractor has failed to make a good faith effort to comply with the requirements imposed on the contractor by this chapter.

(2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The clause required by paragraph (1) shall be made part of the Federal Acquisition Regulation.

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1 (b) DEMONSTRATION OF GOOD FAITH EFFORT.—A contractor shall be  
2 afforded an opportunity to demonstrate a good faith effort regarding com-  
3 pliance prior to the contracting officer’s final decision regarding the imposi-  
4 tion of damages and the amount of damages under subsection (a).

5 (c) DISPUTE RESOLUTION.—The final decision of a contracting officer re-  
6 garding the contractor’s obligation to pay damages under subsection (a) or  
7 the amount of damages shall be subject to chapter 71 of title 41.

8 **§ 243106. Payment of subcontractors**

9 (a) DEFINITION OF COVERED CONTRACT.—In this section, the term  
10 “covered contract” means a contract relating to which a prime contractor  
11 is required to develop a subcontracting plan under section 243103 of this  
12 title.

13 (b) NOTICE.—

14 (1) IN GENERAL.—A prime contractor for a covered contract shall  
15 notify in writing the contracting officer for the covered contract if—

16 (A) the prime contractor pays a reduced price to a subcontractor  
17 for a good or service on completion of the responsibilities of  
18 the subcontractor; or

19 (B) the payment to a subcontractor is more than 90 days past  
20 due for a good or service provided for the covered contract for  
21 which the Federal agency has paid the prime contractor.

22 (2) CONTENTS.—A prime contractor shall include in a notice under  
23 paragraph (1) the reason for the reduction in a payment to or failure  
24 to pay a subcontractor.

25 (c) PERFORMANCE EVALUATION.—In evaluating the performance of a  
26 prime contractor, the contracting officer for a covered contract shall take  
27 into consideration an unjustified failure by the prime contractor to make a  
28 full or timely payment to a subcontractor.

29 (d) CONTROL OF FUNDS.—If the contracting officer for a covered con-  
30 tract determines that a prime contractor has a history of unjustified failures  
31 to make full and timely payment to 1 or more subcontractors, the contract-  
32 ing officer shall record the identity of the contractor in accordance with the  
33 regulations promulgated under subsection (e).

34 (e) REGULATIONS.—The Federal Acquisition Regulatory Council shall  
35 amend the Federal Acquisition Regulation to—

36 (1) describe the circumstances under which a contractor may be de-  
37 termined to have a history of unjustified failures to make full and time-  
38 ly payment to 1 or more subcontractors;

39 (2) establish a process for contracting officers to record the identity  
40 of a contractor described in paragraph (1); and

(3) require the identity of a contractor described in paragraph (1) to be incorporated in, and made publicly available through, the Federal Awardee Performance and Integrity Information System, or any successor to the System.

**§ 243107. Subcontracting misrepresentations**

The Administrator, in consultation with the Administrator for Federal Procurement Policy, shall promulgate regulations relating to, and the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation to establish a policy on, subcontracting compliance relating to small business concerns, including—

- (1) assignment of compliance responsibilities between contracting offices, small business offices, and program offices; and
- (2) periodic oversight and review activities.

**§ 243108. Material breach**

The failure of a contractor or subcontractor to comply in good faith with—

- (1) the clause required under section 243101 of this title; or
- (2) a subcontracting plan required of the contractor pursuant under section 243103 of this title to be included in its contract or subcontract;

shall be a material breach of the contract or subcontract.

**§ 243109. Effect of chapter**

Nothing in this chapter supersedes the requirements of part 331 of title 44, Code of Federal Regulations (or any successor regulation).

**Chapter 245—Notice Provisions**

Sec.

245101. Notice provisions.

245102. Availability of complete solicitation package.

245103. Limited applicability to Tennessee Valley Authority.

**§ 245101. Notice provisions**

(a) IN GENERAL.—Except as provided in subsection (e)—

(1) an executive agency intending to—

(A) solicit bids or proposals for a contract for property or services for a price expected to exceed \$25,000; or

(B) place an order, expected to exceed \$25,000, under a basic agreement, basic ordering agreement, or similar arrangement;

shall publish a notice described in subsection (d);

(2) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than 10 days, in a public place at the contracting office issuing the solicitation, a notice of solicitation described in subsection (d)—

1 (A) in the case of an executive agency other than the Depart-  
2 ment of Defense, if the contract is for a price expected to exceed  
3 \$10,000, but not to exceed \$25,000; and

4 (B) in the case of the Department of Defense, if the contract  
5 is for a price expected to exceed \$5,000, but not to exceed  
6 \$25,000; and

7 (3) an executive agency awarding a contract for property or services  
8 for a price exceeding \$100,000, or placing an order described in para-  
9 graph (1)(B) exceeding \$100,000, shall furnish for publication by the  
10 Secretary of Commerce a notice announcing the award or order if there  
11 is likely to be a subcontract under the contract or order.

12 (b) MEANS OF PUBLICATION.—

13 (1) NOTICES OF SOLICITATION.—A notice of solicitation required to  
14 be published under subsection (a) may be published by electronic  
15 means that meet the accessibility requirements under section 1708(d)  
16 of title 41.

17 (2) NOTICES OF SUBCONTRACTING OPPORTUNITY.—

18 (A) IN GENERAL.—A notice of subcontracting opportunity may  
19 be submitted for publication by—

20 (i) a business concern awarded a contract by an executive  
21 agency subject to subsection (a)(3); and

22 (ii) a business concern that is a subcontractor or supplier  
23 (at any tier) to such a business concern having a subcontract-  
24 ing opportunity in excess of \$10,000.

25 (B) CONTENTS.—A notice of a subcontracting opportunity shall  
26 include—

27 (i) a description of the business opportunity that is com-  
28 parable to the description specified in subparagraphs (A),  
29 (B), (C), and (D) of subsection (d)(1); and

30 (ii) the due date for receipt of offers.

31 (C) UNIFORM IMPLEMENTATION.—The Federal Acquisition  
32 Regulation shall provide for uniform implementation of this para-  
33 graph.

34 (c) LIMITATIONS.—When an executive agency is required by subsection  
35 (a)(1) to publish a notice of solicitation, the executive agency shall not—

36 (1) issue the solicitation earlier than 15 days after the date on which  
37 the notice is published; or

38 (2) in the case of a contract or order estimated to be greater than  
39 the simplified acquisition threshold, establish a deadline for the submis-  
40 sion of all bids or proposals in response to the notice required by sub-  
41 section (a)(1) that—

1 (A) in the case of an order under a basic agreement, basic or-  
2 dering agreement, or similar arrangement, is earlier than the date  
3 that is 30 days after the date on which the notice required by sub-  
4 section (a)(1)(B) is published;

5 (B) in the case of a solicitation for research and development,  
6 is earlier than the date that is 45 days after the date on which  
7 the notice required by subsection (a)(1)(A) is published; or

8 (C) in any other case, is earlier than the date that is 30 days  
9 after the date on which the solicitation is issued.

10 (d) CONTENTS OF NOTICE.—

11 (1) IN GENERAL.—A notice of solicitation required by paragraph (1)  
12 or (2) of subsection (a) shall include—

13 (A) an accurate description of the property or services to be  
14 contracted for;

15 (B) provisions that—

16 (i)(I) state whether the technical data required to respond  
17 to the solicitation will not be furnished as part of the solicita-  
18 tion; and

19 (II) identify the source in the Government, if any, from  
20 which the technical data may be obtained; and

21 (ii)(I) state whether an offeror, its product, or service must  
22 meet a qualification requirement in order to be eligible for  
23 award; and

24 (II) if so, identify the office from which a qualification re-  
25 quirement may be obtained;

26 (C) the name, business address, and telephone number of the  
27 contracting officer;

28 (D) a statement that all responsible sources may submit a bid,  
29 proposal, or quotation (as appropriate) that shall be considered by  
30 the agency;

31 (E) in the case of a procurement using procedures other than  
32 competitive procedures, a statement of the reason justifying the  
33 use of such procedures and the identity of the intended source;  
34 and

35 (F) in the case of a contract in an amount estimated to be  
36 greater than \$25,000 but not greater than the simplified acquisi-  
37 tion threshold—

38 (i) a description of the procedures to be used in awarding  
39 the contract; and



1 (ii) a statement specifying the periods for prospective offer-  
2 ors and the contracting officer to take the necessary preaward  
3 and award actions.

4 (2) PROPERTY OR SERVICE DESCRIPTION.—A property or service de-  
5 scription under paragraph (1)(A)—

6 (A) shall not be unnecessarily restrictive of competition; and

7 (B) shall include, as appropriate, the agency nomenclature, Na-  
8 tional Stock Number or other part number, and a brief description  
9 of the item's form, fit, or function, physical dimensions, predomi-  
10 nant material of manufacture, or similar information that will as-  
11 sist a prospective contractor in making an informed business judg-  
12 ment concerning whether the prospective contractor should request  
13 a copy of the solicitation.

14 (e) EXEMPTED ACTIVITIES.—A notice is not required under subsection  
15 (a)(1) if—

16 (1) the proposed procurement—

17 (A) is for an amount not greater than the simplified acquisition  
18 threshold; and

19 (B) is to be conducted by—

20 (i) using widespread electronic public notice of the solicita-  
21 tion in a form that allows convenient and universal user ac-  
22 cess through a single, Governmentwide point of entry; and

23 (ii) permitting the public to respond to the solicitation elec-  
24 tronically;

25 (2)(A) the notice would disclose the executive agency's needs; and

26 (B) the disclosure of those needs would compromise the national se-  
27 curity;

28 (3)(A) the proposed procurement would result from acceptance of an  
29 unsolicited proposal that demonstrates a unique and innovative re-  
30 search concept; and

31 (B) the publication of a notice of the unsolicited research proposal  
32 would disclose the originality of thought or innovativeness of the pro-  
33 posal or would disclose proprietary information associated with the pro-  
34 posal;

35 (4) the proposed procurement would result from acceptance of a pro-  
36 posal submitted under chapter 263;

37 (5) the procurement is made against an order placed under a re-  
38 quirements contract;

39 (6) the procurement is made for perishable subsistence supplies;

40 (7)(A) the procurement is for a utility service other than a tele-  
41 communication service; and

1 (B) only 1 source is available; or  
 2 (8) the procurement is for the service of an expert for use in any  
 3 litigation or dispute (including preparation for any foreseeable litigation  
 4 or dispute) that involves or could involve the Federal Government in  
 5 any trial, hearing, or proceeding before any court, administrative tribu-  
 6 nal, or agency, or in any part of an alternative dispute resolution proc-  
 7 ess, whether or not the expert is expected to testify.

8 **§ 245102. Availability of complete solicitation package**

9 (a) IN GENERAL.—An executive agency shall make available to any busi-  
 10 ness concern, or the authorized representative of a business concern, the  
 11 complete solicitation package for any ongoing procurement announced in a  
 12 notice under section 245101 of this title.

13 (b) FEE.—An executive agency may require the payment of a fee, not ex-  
 14 ceeding the actual cost of duplication, for a copy of a solicitation package  
 15 under subsection (a).

16 **§ 245103. Limited applicability to Tennessee Valley Author-**  
 17 **ity**

18 This chapter applies to the Tennessee Valley Authority only with respect  
 19 to procurements to be paid from appropriated funds.

20 **Chapter 247—Noncompetitive Procedures**

Sec.

247101. Limitation on use of noncompetitive procedures.

247102. Limited applicability to Tennessee Valley Authority.

21 **§ 247101. Limitation on use of noncompetitive procedures**

22 (a) IN GENERAL.—An executive agency may not award a contract using  
 23 noncompetitive procedures unless—

24 (1) except as provided in subsection (c), a written justification for  
 25 the use of noncompetitive procedures has been approved—

26 (A) in the case of a contract for an amount exceeding \$100,000  
 27 (but equal to or less than \$1,000,000), by the advocate for com-  
 28 petition for the procurement activity;

29 (B) in the case of a contract for an amount exceeding  
 30 \$1,000,000 (but equal to or less than \$10,000,000), by the head  
 31 of the procurement activity or a delegate who—

32 (i) if a member of the Armed Forces, is a general or flag  
 33 officer; or

34 (ii) if a civilian, is serving in a position classified above  
 35 GS-15 pursuant to section 5108 of title 5; or

36 (C) in the case of a contract for an amount exceeding  
 37 \$10,000,000, by the senior procurement executive of the agency  
 38 designated pursuant to section 1702(c) of title 41; and

(2) all other requirements applicable to the use of noncompetitive procedures under section 3304 of title 41 or chapter 137 of title 10, as appropriate, have been satisfied.

(b) NONDELEGABILITY.—The authority of an advocate for competition to approve the use of noncompetitive procedures under subsection (a)(1)(A) and the authority of a senior procurement executive to approve the use of noncompetitive procedures under subsection (a)(1)(C) may not be delegated.

(c) EXCEPTIONS.—The same exceptions as are provided in section 3304(e)(4) of title 41 or section 2304(f)(2) of title 10 shall apply with respect to the requirements of subsection (a)(1) of this section in the same manner as those exceptions apply to the requirements of section 303(f)(1) of section 3304(e)(1) of title 41 or section 2304(f)(1) of title 10, as appropriate.

**§ 247102. Limited applicability to Tennessee Valley Authority**

This chapter applies to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.

**Division H—Contract Reservation  
Programs**

**Chapter 251—General Provisions**

Sec.

- 251101. Awards of contracts to small business concerns.
- 251102. Placement of contracts by procuring agency.
- 251103. Disabled individuals.
- 251104. Priority for areas of concentrated unemployment or underemployment and for labor surplus areas.
- 251105. Procurement strategies; contract bundling.
- 251106. Goals for participation by small business concerns in procurement contracts.
- 251107. No effect on certain small business set-asides.
- 251108. Mandatory contract reservation.
- 251109. Offices of Small and Disadvantaged Business Utilization.
- 251110. Breakout procurement center representatives.
- 251111. Department of Defense, Coast Guard, and National Aeronautics and Space Administration contract goals.
- 251112. Actions by procurement center representatives to ensure compliance.
- 251113. Percentages of contract performance.
- 251114. Multiple award contracts.

**§ 251101. Awards of contracts to small business concerns**

(a) IN GENERAL.—Subject to subsection (b), a small business concern shall receive any award or contract (or any part of an award or contract), and be awarded any contract for the sale of Government property, as to which the Administrator and the contracting procurement or disposal agency determine it to be in the interest of—

- (1) maintaining or mobilizing the Nation's full productive capacity;
- (2) war or national defense programs;

1           (3) ensuring that a fair proportion of the total purchases and con-  
2           tracts for property and services for the Government in each industry  
3           category are placed with small business concerns; or

4           (4) ensuring that a fair proportion of the total sales of Government  
5           property be made to small business concerns.

6           (b) NO CHANGE IN PREFERENCES OR PRIORITIES.—Nothing in this sub-  
7           title changes any preference or priority established by law with respect to  
8           the sale of electric power or other property by the Government or any Gov-  
9           ernment agency.

10          (c) DETERMINATIONS.—A determination under subsection (a) may be  
11          made for individual awards or contracts or for classes of awards or con-  
12          tracts.

13          (d) INDUSTRY CATEGORIES.—

14           (1) IN GENERAL.—For purposes of subsection (a)(3), an industry  
15           category is a discrete group of similar goods and services.

16           (2) DETERMINATION.—A discrete group of similar goods and serv-  
17           ices shall be determined by the Administrator in accordance with the  
18           definition of a United States industry under the North American In-  
19           dustry Classification System, as established by the Office of Manage-  
20           ment and Budget, except that the Administrator shall limit such an in-  
21           dustry category to a greater extent than provided under the North  
22           American Industry Classification System if the Administrator receives  
23           evidence indicating that further segmentation for purposes of sub-  
24           section (a)(3) is warranted due to special capital equipment needs or  
25           special labor or geographic requirements or to recognize a new indus-  
26           try.

27           (3) LIMITATION.—A market for goods or services may not be seg-  
28           mented under paragraph (2) due to geographic requirements unless—

29           (A) the Government typically designates the area where work  
30           for contracts for such goods or services is to be performed;

31           (B) Government purchases comprise the major portion of the  
32           entire domestic market for such goods or services; and

33           (C) due to the fixed location of facilities, high mobilization  
34           costs, or similar economic factors, it is unreasonable to expect  
35           competition from business concerns located outside the general  
36           areas where the business concerns are located.

37          (e) AVOIDANCE OF CONTRACT BUNDLING.—To foster the participation of  
38          small business concerns in the contracting opportunities of the Government,  
39          a Federal agency, to the maximum extent practicable, shall—

40           (1) foster the participation of small business concerns as prime con-  
41           tractors, subcontractors, and suppliers;

1           (2) structure its contracting requirements to facilitate competition by  
2           and among small business concerns, taking all reasonable steps to  
3           eliminate obstacles to participation by small business concerns; and

4           (3) avoid unnecessary and unjustified bundling of contract require-  
5           ments that precludes participation by small business in procurements  
6           as prime contractors.

7           (f) PROPOSED PROCUREMENTS THAT MAKE PARTICIPATION BY SMALL  
8           BUSINESS CONCERNS UNLIKELY.—

9           (1) NOTIFICATION OF SMALL BUSINESS PROCUREMENT CENTER  
10          REPRESENTATIVE.—If—

11           (A)(i) a proposed procurement includes in its statement of work  
12           a good or service currently being performed by a small business  
13           concern; and

14           (ii) the proposed procurement is in a quantity or estimated dol-  
15           lar value the magnitude of which renders prime contract participa-  
16           tion by small business concerns unlikely;

17           (B) a proposed procurement for construction seeks to package  
18           or consolidate discrete construction projects; or

19           (C) a solicitation involves an unnecessary or unjustified bun-  
20           dling of contract requirements, as determined by the Adminis-  
21           trator;

22           the procurement activity shall, at least 30 days before issuance of the  
23           solicitation, provide to the procurement activity's small business pro-  
24           curement center representative a copy of the proposed procurement and  
25           a statement of explanation.

26           (2) CONTENTS OF STATEMENT OF EXPLANATION.—A statement of  
27           explanation under paragraph (1) shall explain—

28           (A) why the proposed acquisition cannot be divided into reason-  
29           ably small lots (not less than economic production runs) to permit  
30           offers on quantities less than the total requirement;

31           (B) why delivery schedules cannot be established on a realistic  
32           basis that will encourage participation by small business concerns  
33           to the extent consistent with the actual requirements of the Gov-  
34           ernment;

35           (C) why the proposed acquisition cannot be offered so as to  
36           make participation by small business concerns likely;

37           (D) why construction cannot be procured as separate discrete  
38           projects; or

39           (E) why the procurement activity determined that the bundled  
40           contract is necessary and justified.

1           (3) CONCURRENT PROCESS.—The 30-day notification process shall  
2 occur concurrently with other processing steps required before issuance  
3 of the solicitation.

4           (4) ALTERNATIVE PROCUREMENT METHODS.—Within 15 days after  
5 receipt of the proposed procurement and statement of explanation, if  
6 the procurement center representative believes that the procurement as  
7 proposed will render prime contract participation by small business  
8 concerns unlikely, the procurement center representative shall rec-  
9 ommend to the procurement activity alternative procurement methods  
10 that would increase prime contracting opportunities for small business  
11 concerns.

12           (5) FAILURE TO AGREE.—If the Administrator and the contracting  
13 procurement agency fail to agree, the Administrator shall appeal the  
14 matter to the head of the appropriate Federal agency for determina-  
15 tion.

16           (g) FAIR MARKET PRICE.—A contract may not be awarded under this  
17 section if the award of the contract would result in a cost to the procure-  
18 ment activity that exceeds a fair market price.

19           (h) WHOLESALERS AND RETAILERS.—

20           (1) IN GENERAL.—An otherwise responsible small business concern  
21 that is described in paragraph (2) shall not be denied the opportunity  
22 to submit and have considered its offer for a procurement contract for  
23 the supply of a product to be let under this section solely because the  
24 small business concern is other than the manufacturer or processor of  
25 the product to be supplied under the contract.

26           (2) REQUIREMENTS.—A small business concern referred to in para-  
27 graph (1) is a small business concern that—

28                   (A) is primarily engaged in wholesale or retail trade;

29                   (B) is a small business concern under the numerical size stand-  
30 ard for the North American Industry Classification System code  
31 assigned to the contract solicitation on which the offer is being  
32 made;

33                   (C) is a regular dealer (as defined under section 6510 of title  
34 41) in the product to be offered the Government; and

35                   (D) represents that the small business concern will supply the  
36 product of a domestic small business manufacturer or processor,  
37 unless a waiver of this subparagraph is granted—

38                           (i) by the Administrator, after reviewing a determination  
39 by the contracting officer that no small business manufac-  
40 turer or processor can reasonably be expected to offer a prod-

uct meeting the specifications (including period for performance) required of an offeror by the solicitation; or

(ii) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

(d) FORECAST OF CONTRACT OPPORTUNITIES.—

(1) IN GENERAL.—An executive agency that reports to the Federal Procurement Data System contract actions with an aggregate value in excess of \$50,000,000 in any fiscal year shall—

(A) prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns are capable of performing; and

(B) periodically revise the forecast during the following year.

(2) CONTENTS.—To the extent that the information is available, a forecast under paragraph (1) shall specify—

(A) the approximate number of individual contract opportunities (and the number of opportunities within a class);

(B) the approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities;

(C) the anticipated time (by fiscal year quarter) for the issuance of a procurement request; and

(D) the activity responsible for the award and administration of the contract.

(3) SUBMISSION OF FORECASTS.—Not later than 10 days after completion of a forecast under paragraph (1), the head of the executive agency that prepared the forecast shall submit the forecast to—

(A) the director of the office of small and disadvantaged business utilization established under section 251109 of this title for the executive agency; and

(B) the Administrator.

(4) SCOPE OF INFORMATION REPORTED.—A forecast submitted under paragraph (3) may be limited to classes of items and services for which there are substantial annual purchases.

(5) AVAILABILITY OF FORECASTS.—A forecast submitted under paragraph (3) shall be available to small business concerns.

**§ 251102. Placement of contracts by procuring agency**

With respect to any work to be performed the amount of which would exceed the maximum amount of a contract for which a surety may be guaranteed against loss under section 321102 of this title, the contracting pro-

1 curement agency shall, to the extent practicable, place contracts so as to  
2 allow more than 1 small business concern to perform the work.

3 **§ 251103. Disabled individuals**

4 (a) DEFINITION OF COMMITTEE.—In this section, the term “Committee”  
5 means the Committee for Purchase From People Who Are Blind or Severely  
6 Disabled established under section 8502 of title 41.

7 (b) PARTICIPATION.—

8 (1) IN GENERAL.—During fiscal year 1995, public or private organi-  
9 zations for the disabled shall be eligible to participate in programs au-  
10 thorized under this chapter in an aggregate amount not to exceed  
11 \$40,000,000.

12 (2) PROCUREMENT LIST.—None of the amounts authorized for par-  
13 ticipation by paragraph (1) may be placed on the procurement list  
14 maintained by the Committee under section 8503 of title 41.

15 (c) MONITORING AND EVALUATION.—The Administrator shall monitor  
16 and evaluate participation under subsection (b).

17 (d) APPEAL.—

18 (1) FILING.—Not later than 10 days after the announcement of a  
19 proposed award of a contract by a Federal agency to a public or private  
20 organization for the disabled, a for-profit small business concern that  
21 has experienced or is likely to experience severe economic injury as the  
22 result of the proposed award may file an appeal of the proposed award  
23 with the Administrator.

24 (2) ALLEVIATION OF INJURY.—If a small business concern files an  
25 appeal of a proposed award under paragraph (1) and the Adminis-  
26 trator, after consultation with the Executive Director of the Committee,  
27 finds that the small business concern has experienced or is likely to ex-  
28 perience severe economic injury as the result of the proposed award,  
29 not later than 30 days after the filing of the appeal, the Administrator  
30 shall require each Federal agency having procurement powers to take  
31 such action as is appropriate to alleviate economic injury sustained or  
32 likely to be sustained by the small business concern.

33 (e) MAXIMUM AMOUNT OF AWARDS.—

34 (1) REPORTING.—A Federal agency having procurement powers  
35 shall report to the Office of Federal Procurement Policy each time a  
36 contract subject to subsection (b) is entered into and shall include in  
37 its report the amount of the next higher bid submitted by a for-profit  
38 small business concern.

39 (2) DATA COLLECTION.—The Office of Federal Procurement Policy  
40 shall collect data reported under paragraph (1) through the Federal



1 procurement data system and shall report the data to the Adminis-  
2 trator.

3 (3) NOTIFICATION.—The Administrator shall notify all Federal  
4 agencies having procurement powers when the maximum amount of  
5 awards authorized under subsection (b) has been made during any fis-  
6 cal year.

7 (f) CONTRACT PERFORMANCE BY DISABLED INDIVIDUALS.—A contract  
8 may be awarded under this section only if at least 75 percent of the direct  
9 labor performed on each item being produced under the contract in a shel-  
10 tered workshop or performed in providing each type of service under the  
11 contract by a sheltered workshop is performed by disabled individuals.

12 (g) MULTIYEAR CONTRACTS.—A Federal agency that awards 1 or more  
13 contracts to such a public or private organization for the disabled under this  
14 section may use multiyear contracts, if appropriate.

15 **§ 251104. Priority for areas of concentrated unemployment**  
16 **or underemployment and for labor surplus areas**

17 (a) IN GENERAL.—For purposes of this chapter, priority shall be given  
18 to the awarding of contracts and the placement of subcontracts to small  
19 business concerns that shall perform a substantial proportion of the produc-  
20 tion on the contracts and subcontracts in—

- 21 (1) an area of concentrated unemployment or underemployment; or  
22 (2) a labor surplus area.

23 (b) SETASIDES.—

24 (1) IN GENERAL.—Notwithstanding any other provision of law, total  
25 labor surplus area setasides under part 331 of title 44, Code of Federal  
26 Regulations (or any successor regulation), shall be authorized if the  
27 Secretary of Defense specifically determines that there is a reasonable  
28 expectation that offers will be obtained from a sufficient number of eli-  
29 gible concerns so that awards will be made at reasonable prices.

30 (2) DETERMINATION OF LABOR SURPLUS AREAS.—

31 (A) CONSIDERATION OF PERSONS AVAILABLE FOR EMPLOY-  
32 MENT.—To the extent possible, in determining labor surplus areas,  
33 consideration shall be given to persons who would be available for  
34 employment were suitable employment available.

35 (B) CRITERIA IN EFFECT.—For purposes of this chapter, the  
36 determination of a labor surplus area shall be made on the basis  
37 of the criteria in effect at the time of the determination, except  
38 that any minimum population criteria shall not exceed 25,000.

39 (C) DETERMINATION BY SECRETARY OF LABOR.—A determina-  
40 tion of a labor surplus area shall be made by the Secretary of  
41 Labor.

1     **§ 251105. Procurement strategies; contract bundling**

2       (a) IN GENERAL.—To the maximum extent practicable, procurement  
3 strategies used by a Federal agency having contracting authority shall facili-  
4 tate the maximum participation of small business concerns as prime con-  
5 tractors, subcontractors, and suppliers.

6       (b) MARKET RESEARCH.—

7           (1) IN GENERAL.—Before proceeding with an acquisition strategy  
8 that could lead to a contract containing consolidated procurement re-  
9 quirements, the head of a Federal agency shall conduct market re-  
10 search to determine whether consolidation of the requirements is nec-  
11 essary and justified.

12          (2) FACTORS.—For purposes of paragraph (1), consolidation of the  
13 requirements may be determined as being necessary and justified if, as  
14 compared with the benefits that would be derived from contracting to  
15 meet those requirements if not consolidated, the Federal Government  
16 would derive from the consolidation measurably substantial benefits, in-  
17 cluding any combination of benefits that, in combination, are measur-  
18 ably substantial.

19          (3) BENEFITS.—Benefits described in paragraph (2) may include—

20           (A) cost savings;

21           (B) quality improvements;

22           (C) reduction in acquisition cycle times;

23           (D) better terms and conditions; or

24           (E) any other benefit.

25          (4) REDUCTION OF ADMINISTRATIVE OR PERSONNEL COSTS NOT A  
26 SUFFICIENT JUSTIFICATION.—A reduction of administrative or person-  
27 nel costs alone shall not be a justification for bundling of contract re-  
28 quirements unless the cost savings are expected to be substantial in re-  
29 lation to the dollar value of the procurement requirements to be con-  
30 solidated.

31       (c) STRATEGY SPECIFICATIONS.—If the head of a procuring agency de-  
32 termines that a proposed procurement strategy for a procurement involves  
33 a substantial bundling of contract requirements, the proposed procurement  
34 strategy shall—

35           (1) identify specifically the benefits anticipated to be derived from  
36 the bundling of contract requirements;

37           (2) set forth an assessment of the specific impediments to participa-  
38 tion by small business concerns as prime contractors that result from  
39 the bundling of contract requirements and specify actions designed to  
40 maximize small business participation as subcontractors (including sup-

pliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and

(3) include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

(d) CONTRACT TEAMING.—

(1) IN GENERAL.—In the case of a solicitation of offers for a bundled contract that is issued by the head of a Federal agency, a small business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract.

(2) EVALUATION.—The head of the Federal agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors.

(3) NO EFFECT ON STATUS AS SMALL BUSINESS CONCERN.—Teaming by a small business concern under this subsection shall not affect the status of the small business concern as a small business concern for any other purpose.

(e) DATABASE AND ANALYSIS WITH RESPECT TO BUNDLED CONTRACTS.—

(1) DATABASE.—The Administrator shall maintain a database containing information regarding—

(A) each bundled contract awarded by a Federal agency; and

(B) each small business concern that has been displaced as a prime contractor as a result of the award of a bundled contract.

(2) ANALYSIS.—For each bundled contract that is to be recomputed as a bundled contract, the Administrator shall determine—

(A) the amount of savings and benefits (in accordance with subsection (b)) achieved under the bundling of contract requirements; and

(B) whether such savings and benefits will continue to be realized if the contract remains bundled, and whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(3) ACCESS TO DATA.—

(A) FEDERAL PROCUREMENT DATA SYSTEM.—To assist in the implementation of this subsection and section 107106 of this title, the Administrator shall have access to information collected through the Federal Procurement Data System.

(B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the implementation of this subsection and section 107106 of this title, the head of each procuring agency shall provide, on request of the

1 Administrator, procurement information collected through existing  
2 agency data collection sources.

3 (f) BUNDLING ACCOUNTABILITY MEASURES.—

4 (1) TEAMING REQUIREMENTS.—A Federal agency shall include in  
5 each solicitation for a multiple award contract above the substantial  
6 bundling threshold of the Federal agency a provision soliciting bids  
7 from any responsible source, including responsible small business con-  
8 cerns and teams or joint ventures of small business concerns.

9 (2) POLICIES ON REDUCTION OF CONTRACT BUNDLING.—

10 (A) IN GENERAL.—The Federal Acquisition Regulatory Council  
11 shall amend the Federal Acquisition Regulation to—

12 (i) establish a Governmentwide policy regarding contract  
13 bundling, including regarding the solicitation of teaming and  
14 joint ventures under paragraph (1); and

15 (ii) require that the policy established under clause (i) be  
16 published on the website of each Federal agency.

17 (B) RATIONALE FOR CONTRACT BUNDLING.—Not later than 30  
18 days after the date on which the head of a Federal agency submits  
19 data certifications to the Administrator for Federal Procurement  
20 Policy, the head of the Federal agency shall publish on the website  
21 of the Federal agency a list and rationale for any bundled contract  
22 for which the Federal agency solicited bids or that was awarded  
23 by the Federal agency.

24 (3) REPORTS.—

25 (A) IN GENERAL.—Every 3 years, the Administrator shall sub-  
26 mit to the Committee on Small Business and Entrepreneurship of  
27 the Senate and the Committee on Small Business of the House  
28 of Representatives a report regarding procurement center rep-  
29 resentatives and commercial market representatives.

30 (B) CONTENTS.—A report under subparagraph (A) shall—

31 (i) identify each area for which the Administrator has as-  
32 signed a procurement center representative or a commercial  
33 market representative;

34 (ii) explain why the Administrator selected the areas identi-  
35 fied under clause (i); and

36 (iii) describe the activities performed by procurement cen-  
37 ter representatives and commercial market representatives.

38 **§ 251106. Goals for participation by small business concerns**  
39 **in procurement contracts**

40 (a) GOVERNMENTWIDE GOALS.—

1 (1) IN GENERAL.—The President shall annually establish separate  
2 Governmentwide goals for procurement contracts awarded to each of  
3 the following:

4 (A) Small business concerns.

5 (B) Qualified HUBZone small business concerns.

6 (C) Small business concerns owned and controlled by service-  
7 disabled veterans.

8 (D) Small business concerns owned and controlled by socially  
9 and economically disadvantaged individuals.

10 (E) Small business concerns owned and controlled by women.

11 (2) OVERALL GOAL.—The overall Governmentwide goal for participa-  
12 tion by small business concerns shall be established at not less than  
13 23 percent of the total value of all prime contract awards for each fis-  
14 cal year.

15 (3) GOALS FOR SPECIFIC TYPES OF SMALL BUSINESS CONCERN.—

16 (A) QUALIFIED HUBZONE SMALL BUSINESS CONCERNS.—The  
17 Governmentwide goal for participation by qualified HUBZone  
18 small business concerns shall be established at not less than 3 per-  
19 cent of the total value of all prime contract and subcontract  
20 awards for each fiscal year.

21 (B) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY  
22 SERVICE-DISABLED VETERANS.—The Governmentwide goal for  
23 participation by small business concerns owned and controlled by  
24 service-disabled veterans shall be established at not less than 3  
25 percent of the total value of all prime contract and subcontract  
26 awards for each fiscal year.

27 (C) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY  
28 SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—  
29 The Governmentwide goal for participation by small business con-  
30 cerns owned and controlled by socially and economically disadvan-  
31 tagged individuals shall be established at not less than 5 percent  
32 of the total value of all prime contract and subcontract awards for  
33 each fiscal year.

34 (D) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY  
35 WOMEN.—The Governmentwide goal for participation by small  
36 business concerns owned and controlled by women shall be estab-  
37 lished at not less than 5 percent of the total value of all prime  
38 contract and subcontract awards for each fiscal year.

39 (4) FEDERAL AGENCY GOALS.—

40 (A) IN GENERAL.—Notwithstanding the Governmentwide goal,  
41 each Federal agency shall have an annual goal that presents, for

1 that Federal agency, the maximum practicable opportunity for  
2 small business concerns (including qualified HUBZone small busi-  
3 ness concerns, small business concerns owned and controlled by  
4 service-disabled veterans, small business concerns owned and con-  
5 trolled by socially and economically disadvantaged individuals,  
6 small business concerns owned and controlled by women, and other  
7 small business concerns) to participate in the performance of con-  
8 tracts let by the Federal agency.

9 (B) CUMULATIVE FEDERAL AGENCY GOALS TO MEET OR EX-  
10 CEED GOVERNMENTWIDE GOAL.—The Administrator and the Ad-  
11 ministrator for Federal Procurement Policy shall, when exercising  
12 authority under subsection (b), ensure that the cumulative annual  
13 prime contract goals for all Federal agencies meet or exceed the  
14 annual Governmentwide prime contract goal established by the  
15 President under this subsection.

16 (5) PROCUREMENT PROCEDURES.—

17 (A) IN GENERAL.—To facilitate the attainment of a goal for the  
18 participation of small business concerns owned and controlled by  
19 socially and economically disadvantaged individuals that is estab-  
20 lished for a Federal agency under this subsection, the head of the  
21 Federal agency may enter into contracts using—

22 (i) less than full and open competition by restricting the  
23 competition for such awards to small business concerns owned  
24 and controlled by socially and economically disadvantaged in-  
25 dividuals; and

26 (ii) a price evaluation preference not in excess of 10 per-  
27 cent when evaluating an offer received from a small business  
28 concern owned and controlled by socially and economically  
29 disadvantaged individuals as the result of an unrestricted so-  
30 licitation.

31 (B) APPLICABILITY.—Subparagraph (A) does not apply to the  
32 Department of Defense, the Coast Guard, or the National Aero-  
33 nautics and Space Administration.

34 (C) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION  
35 REGULATION.—

36 (i) IN GENERAL.—The Federal Acquisition Regulation shall  
37 provide for uniform implementation of the authority provided  
38 in subparagraph (A).

39 (ii) MATTERS TO BE ADDRESSED.—The provisions of the  
40 Federal Acquisition Regulation under clause (i) shall in-  
41 clude—

1 (I) conditions for the use of advance payments;  
2 (II) provisions for contract payment terms that pro-  
3 vide for—

4 (aa) accelerated payment for work performed dur-  
5 ing the period for contract performance; and

6 (bb) full payment for work performed;

7 (III) guidance on how contracting officers may use, in  
8 solicitations for various classes of products or services, a  
9 price evaluation preference under subparagraph (A)(ii),  
10 to provide a reasonable advantage to small business con-  
11 cerns owned and controlled by socially and economically  
12 disadvantaged individuals without effectively eliminating  
13 any participation of other small business concerns; and

14 (IV)(aa) procedures for a person to request the head  
15 of a Federal agency to determine whether the use of  
16 competitions restricted to small business concerns owned  
17 and controlled by socially and economically disadvan-  
18 taged individuals at a contracting activity of the Federal  
19 agency has caused a particular industry category to bear  
20 a disproportionate share of the contracts awarded to at-  
21 tain the goal established for that contracting activity;  
22 and

23 (bb) guidance for limiting the use of such restricted  
24 competitions in the case of any contracting activity and  
25 class of contracts determined in accordance with such  
26 procedures to have caused a particular industry category  
27 to bear a disproportionate share of the contracts award-  
28 ed to attain the goal established for that contracting ac-  
29 tivity.

30 (D) TERMINATION.—This paragraph shall cease to be effective  
31 at the end of September 30, 2003.

32 (b) FEDERAL AGENCY GOALS.—

33 (1) IN GENERAL.—The Administrator and the head of each Federal  
34 agency shall jointly establish goals for the participation by small busi-  
35 ness concerns (including qualified HUBZone small business concerns,  
36 small business concerns owned and controlled by service-disabled veter-  
37 ans, small business concerns owned and controlled by socially and eco-  
38 nomically disadvantaged individuals, small business concerns owned  
39 and controlled by women, and other small business concerns) in pro-  
40 curement contracts of the Federal agency.

1           (2) REQUIREMENTS.—The goals of a Federal agency established  
2 under paragraph (1) shall—

3           (A) present, for that Federal agency, the maximum practicable  
4 opportunity for small business concerns (including qualified HUB-  
5 Zone small business concerns, small business concerns owned and  
6 controlled by service-disabled veterans, small business concerns  
7 owned and controlled by socially and economically disadvantaged  
8 individuals, small business concerns owned and controlled by  
9 women, and other small business concerns) to participate in the  
10 performance of contracts let by the Federal agency; and

11           (B) realistically reflect the potential of qualified HUBZone  
12 small business concerns, small business concerns owned and con-  
13 trolled by service-disabled veterans, small business concerns owned  
14 and controlled by socially and economically disadvantaged individ-  
15 uals, small business concerns owned and controlled by women, and  
16 other small business concerns to perform such contracts and to  
17 perform subcontracts under such contracts.

18           (3) DISAGREEMENT.—If the Administrator and the head of a Fed-  
19 eral agency fail to agree on established goals, the disagreement shall  
20 be submitted to the Administrator for Federal Procurement Policy for  
21 final determination.

22           (4) EXPANSION OF PARTICIPATION.—

23           (A) IN GENERAL.—For the purpose of establishing goals under  
24 this section, the head of a Federal agency shall make consistent  
25 efforts to annually expand participation by small business concerns  
26 from each industry category in procurement contracts of the Fed-  
27 eral agency, including participation by qualified HUBZone small  
28 business concerns, small business concerns owned and controlled  
29 by service-disabled veterans, small business concerns owned and  
30 controlled by socially and economically disadvantaged individuals,  
31 and small business concerns owned and controlled by women.

32           (B) CONSIDERATIONS.—The head of a Federal agency, in at-  
33 tempting to attain such participation, shall consider—

34               (i) contracts awarded as the result of unrestricted competi-  
35 tion; and

36               (ii) contracts awarded after competition restricted to eligi-  
37 ble small business concerns under this chapter and under the  
38 business development program.

39           (5) COMMUNICATION OF IMPORTANCE OF ACHIEVING SMALL BUSI-  
40 NESS GOALS.—



(A) IN GENERAL.—Each procurement employee or program manager described in subparagraph (B) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving small business goals.

(B) PROCUREMENT EMPLOYEES AND PROGRAM MANAGERS.—A procurement employee or program manager referred to in subparagraph (A) is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.

(c) REPORTING BY FEDERAL AGENCIES.—

(1) IN GENERAL.—At the end of each fiscal year, the head of a Federal agency shall submit to the Administrator a report on the extent of participation by small business concerns (including qualified HUB-Zone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans, small business concerns owned and controlled by women, and other small business concerns) in procurement contracts of the Federal agency.

(2) CONTENTS.—A report under paragraph (1) shall contain appropriate justifications for failure to meet the goals under this section.

**§ 251107. No effect on certain small business setasides**

(a) IN GENERAL.—Nothing in this chapter or any other provision of law precludes exclusive small business setasides for procurements of architectural and engineering services, research, development, test, and evaluation.

(b) AUTHORITY.—A Federal agency may develop setasides described in subsection (a) to further the interests of small business in the areas described in that subsection.

**§ 251108. Mandatory contract reservation**

(a) IN GENERAL.—A contract for the purchase of a good or service that has an anticipated value greater than \$2,500 but not greater than \$100,000 shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from 2 or more small business concerns that are—

(1) competitive with market prices; and

(2) competitive with regard to the quality and delivery of the good or service being purchased.

(b) CONSIDERATION OF TIMELY OFFERS.—In carrying out subsection (a), a contracting officer shall consider a responsive offer timely received from an eligible small business concern offeror.

(c) EFFECT OF SECTION.—Nothing in this section precludes an award of a contract with a value not greater than \$100,000 under—

- (1) division B of this subtitle;
- (2) section 2323 of title 10;
- (3) section 249.103 of this title; or
- (4) section 251106(a)(5) of this title.

**§ 251109. Offices of Small and Disadvantaged Business Utilization**

(a) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term “Director” means the Director of Small and Disadvantaged Business Utilization of a Federal agency appointed under subsection (c).

(2) OFFICE.—The term “Office” means the Office of Small and Disadvantaged Business Utilization of a Federal agency established by subsection (b).

(b) ESTABLISHMENT OF OFFICES.—There is established in each Federal agency having procurement powers an office to be known as the Office of Small and Disadvantaged Business Utilization.

(c) DIRECTOR.—

(1) IN GENERAL.—The management of an Office shall be vested in an officer or employee of the Federal agency, appointed by the head of the Federal agency, who shall be known as the Director of Small and Disadvantaged Business Utilization for the Federal agency.

(2) LINE OF AUTHORITY.—The Director for a Federal agency shall be responsible only to, and report directly to, the head or deputy head of the Federal agency, except that the Director in the Department of Defense shall be responsible only to, and report directly to, the Secretary of Defense or any other designee of the Secretary.

(d) GENERAL RESPONSIBILITIES.—The Director for a Federal agency shall be responsible for the implementation and execution of the functions and duties under this chapter and divisions F and G that relate to the Federal agency.

(e) DUTIES.—The Director for a Federal agency shall—

(1)(A) identify proposed solicitations that involve significant bundling of contract requirements; and

(B) work with the agency acquisition officials and the Administrator to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small business concerns as prime contractors or to facilitate small business concern participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued; and

1           (2) assist small business concerns in obtaining payments, required  
2           late payment interest penalties, or information regarding payments due  
3           to small business concerns from an executive agency or a contractor,  
4           in conformity with chapter 39 of title 31 or any other protection for  
5           contractors or subcontractors (including suppliers) that is included in  
6           the Federal Acquisition Regulation or any individual agency supple-  
7           ment to the Governmentwide regulation.

8           (f) SUPERVISORY AUTHORITY.—The Director for a Federal agency shall  
9           have supervisory authority over personnel of the Federal agency to the ex-  
10          tent that the functions and duties of those personnel relate to functions and  
11          duties under this chapter and divisions F and G.

12          (g) SMALL BUSINESS TECHNICAL ADVISERS.—

13           (1) ASSIGNMENT.—The Director for a Federal agency shall assign  
14           a small business technical adviser to each office to which the Adminis-  
15           trator assigns a procurement center representative.

16           (2) QUALIFICATIONS.—A small business technical adviser—

17                (A) shall be a full-time employee of the procurement activity;  
18                and

19                (B) shall be well qualified, technically trained, and familiar with  
20                the goods or services purchased at the procurement activity.

21           (3) PRINCIPAL DUTY.—The principal duty of a small business tech-  
22           nical adviser shall be to assist the SBA procurement center representa-  
23           tive in carrying out duties and functions relating to this chapter and  
24           divisions F and G.

25          (h) COOPERATION AND CONSULTATION.—The Director for a Federal  
26          agency shall cooperate, and consult on a regular basis, with the Adminis-  
27          trator with respect to carrying out the functions and duties described in  
28          subsection (d).

29          (i) RECOMMENDATIONS CONCERNING AWARD OF CONTRACTS.—

30           (1) IN GENERAL.—The Director for a Federal agency shall make  
31           recommendations to contracting officers concerning whether a particu-  
32           lar contract requirement should be awarded pursuant to section  
33           251101 of this title, division F of this subtitle, or section 2323 of title  
34           10.

35           (2) CONSIDERATIONS.—A recommendation under paragraph (1)  
36           shall be made with due regard to the requirements of sections 251110  
37           and 251112 of this title.

38           (3) DOCUMENTATION OF FAILURE TO ACCEPT RECOMMENDATION.—  
39           The failure of a contracting officer to accept a recommendation under  
40           paragraph (1) shall be documented and included within the appropriate  
41           contract file.

1 (j) APPLICABILITY OF SECTION.—This section does not apply to SBA.

2 **§ 251110. Breakout procurement center representatives**

3 (a) DEFINITION OF MAJOR PROCUREMENT CENTER.—In this section, the  
4 term “major procurement center” means a procurement center that—

5 (1) in the opinion of the Administrator, purchases substantial dollar  
6 amounts of other than commercial items; and

7 (2) has the potential to incur significant savings as the result of the  
8 assignment of a breakout procurement center representative.

9 (b) ASSIGNMENT OF BREAKOUT PROCUREMENT CENTER REPRESENTA-  
10 TIVES.—

11 (1) IN GENERAL.—The Administrator shall assign to each major  
12 procurement center a breakout procurement center representative with  
13 such assistance as may be appropriate.

14 (2) ADDITIONAL POSITION.—A breakout procurement center rep-  
15 resentative shall be in addition to the procurement center representa-  
16 tive referred to in section 251109(g)(1) of this title.

17 (c) ADVOCACY.—A breakout procurement center representative shall be  
18 an advocate for—

19 (1) the breakout of items for procurement through full and open  
20 competition, whenever appropriate, while maintaining the integrity of  
21 the system in which items are used; and

22 (2) the use of full and open competition, whenever appropriate, for  
23 the procurement of goods and services by a major procurement center.

24 (d) FUNCTIONS.—In addition to carrying out the responsibilities assigned  
25 by the Administrator, a breakout procurement center representative may—

26 (1)(A) attend any provisioning conference or similar evaluation ses-  
27 sion during which determinations are made concerning whether require-  
28 ments are to be procured through other than full and open competition;  
29 and

30 (B) make recommendations with respect to those requirements to the  
31 members of the conference or session;

32 (2)(A) review, at any time, restrictions on competition previously im-  
33 posed on items through acquisition method coding or similar proce-  
34 dures; and

35 (B) recommend to personnel of the appropriate activity the prompt  
36 reevaluation of such limitations;

37 (3)(A) review restrictions on competition arising out of restrictions  
38 on the rights of the United States in technical data; and

39 (B) when appropriate, recommend that personnel of the appropriate  
40 activity initiate a review of the validity of such an asserted restriction;

1 (4) obtain from any governmental source, and make available to per-  
2 sonnel of the appropriate activity, technical data necessary for the  
3 preparation of a competitive solicitation package for any item of a good  
4 or service previously procured noncompetitively due to the unavail-  
5 ability of such technical data;

6 (5) have access to procurement records and other data of the major  
7 procurement center commensurate with the level of the breakout pro-  
8 curement center representative's approved security clearance classifica-  
9 tion;

10 (6)(A) receive unsolicited engineering proposals; and

11 (B) when appropriate—

12 (i)(I) conduct a value analysis of a proposal to determine wheth-  
13 er the proposal, if adopted, will result in lower costs to the United  
14 States without substantially impeding legitimate acquisition objec-  
15 tives; and

16 (II) forward to personnel of the appropriate activity recom-  
17 mendations with respect to the proposal; or

18 (ii) forward a proposal without analysis to personnel of the ac-  
19 tivity responsible for reviewing such proposals, which personnel  
20 shall furnish the breakout procurement center representative with  
21 information regarding the disposition of the proposal; and

22 (7) review the systems that account for the acquisition and manage-  
23 ment of technical data within the major procurement center to ensure  
24 that the systems provide the maximum availability and access to data  
25 that—

26 (A) are needed for the preparation of offers to sell to the United  
27 States the goods and services to which the data pertain; and

28 (B) potential offerors are entitled to receive.

29 (e) APPEAL OF FAILURE TO ACT FAVORABLY ON RECOMMENDATION.—

30 (1) IN GENERAL.—A breakout procurement center representative  
31 may appeal the failure to act favorably on any recommendation made  
32 under subsection (d).

33 (2) PROCEDURE.—An appeal under paragraph (1) shall be filed and  
34 processed in the same manner and shall be subject to the same condi-  
35 tions and limitations as an appeal filed by the Administrator under sec-  
36 tion 251101(f)(5) of this title.

37 (f) SMALL BUSINESS TECHNICAL ADVISERS.—

38 (1) IN GENERAL.—The Administrator shall assign and co-locate at  
39 least 2 small business technical advisers to each major procurement  
40 center in addition to such other advisers as may be authorized from  
41 time to time.

1           (2) DUTIES.—The sole duties of small business technical advisers as-  
2           signed under paragraph (1) shall be—

3                 (A) to assist the breakout procurement center representative for  
4                 the center to which the small business technical advisers are as-  
5                 signed in carrying out the functions described in subsection (d);  
6                 and

7                 (B) to assist the procurement center representative for each of-  
8                 fice to which the Administrator assigns a procurement center rep-  
9                 resentative.

10       (g) STATUS; QUALIFICATIONS.—

11           (1) IN GENERAL.—A breakout procurement center representative  
12           and a small business technical adviser—

13                 (A) shall be full-time employees of SBA; and

14                 (B) shall be fully qualified, technically trained, and familiar with  
15                 the goods and services procured by the major procurement center  
16                 to which the individual is assigned.

17           (2) ACCREDITED ENGINEER.—In addition to the requirements of  
18           paragraph (1), a breakout procurement center representative and at  
19           least 1 small business technical adviser assigned under this section  
20           shall be accredited engineers.

21       (h) PERSONNEL POSITIONS.—The Administrator shall establish personnel  
22       positions for breakout procurement representatives and small business tech-  
23       nical advisers assigned under this section that are classified at a grade level  
24       of the General Schedule sufficient to attract and retain highly qualified per-  
25       sonnel.

26       (i) FAMILIARIZATION SESSIONS.—

27           (1) IN GENERAL.—At such times as the Administrator considers ap-  
28           propriate, a breakout procurement center representative shall conduct  
29           familiarization sessions for contracting officers and other appropriate  
30           personnel of the major procurement center to which the breakout pro-  
31           curement center representative is assigned.

32           (2) PURPOSE.—A familiarization session shall acquaint the partici-  
33           pants with, and instruct the participants in methods designed to fur-  
34           ther the purposes of, this section.

35       (j) BRIEFING AND REPORT.—

36           (1) IN GENERAL.—A breakout procurement center representative  
37           shall prepare and personally deliver an annual briefing and report to  
38           the head of the major procurement center to which the breakout pro-  
39           curement center representative is assigned.

40           (2) CONTENTS.—A briefing and report under paragraph (1) shall—

1 (A) detail the past and planned activities of the breakout pro-  
2 curement center representative; and

3 (B) contain such recommendations for improvement in the oper-  
4 ation of the major procurement center as may be appropriate.

5 (3) RESPONSE.—The head of the major procurement center shall—

6 (A) personally receive the briefing and report; and

7 (B) not later than 60 calendar days after receipt, respond, in  
8 writing, to each recommendation made by the breakout procure-  
9 ment center representative.

10 (k) STANDARDS FOR MEASURING COST SAVINGS FROM BREAKOUT PRO-  
11 CUREMENT CENTER REPRESENTATIVES.—The Administrator and the  
12 Comptroller General shall jointly establish standards for measuring—

13 (1) cost savings achieved through the efforts of breakout procure-  
14 ment center representatives; and

15 (2) the extent to which competition has been increased as a result  
16 of those efforts.

17 **§ 251111. Department of Defense, Coast Guard, and National**  
18 **Aeronautics and Space Administration contract**  
19 **goals**

20 A Federal agency subject to the requirements of section 2323 of title 10  
21 shall, when implementing those requirements—

22 (1) establish policies and procedures that ensure that there will be  
23 no reduction in the number or dollar value of contracts awarded under  
24 this chapter or division F to achieve any goal or other program objec-  
25 tive; and

26 (2) ensure that those requirements will not alter or change the pro-  
27 curement process used to implement this chapter or division F.

28 **§ 251112. Actions by procurement center representatives to**  
29 **ensure compliance**

30 A procurement center representative assigned under section 251109 or  
31 251110 of this title, in addition to such other duties as the Administrator  
32 may assign, shall—

33 (1) monitor the performance of the procurement activities to which  
34 the procurement center representative is assigned to ascertain the de-  
35 gree of compliance with the requirements of section 251111 of this  
36 title;

37 (2) report to the procurement center representative's immediate su-  
38 pervisors all instances of noncompliance with those requirements; and

39 (3) increase, insofar as possible, the number and dollar value of pro-  
40 curements that may be used for the programs established under this  
41 chapter, division F of this subtitle, and section 2323 of title 10.

1     **§ 251113. Percentages of contract performance**

2       (a) IN GENERAL.—A concern may not be awarded a contract under sec-  
3     tion 251101 of this title as a small business concern unless the concern  
4     agrees that—

5       (1) in the case of a contract for services (except construction), at  
6       least 50 percent of the cost of contract performance incurred for per-  
7       sonnel shall be expended for employees of the concern;

8       (2) in the case of a contract for procurement of goods (other than  
9       procurement from a regular dealer in such goods), the concern will per-  
10      form work for at least 50 percent of the cost of manufacturing the  
11      goods (not including the cost of materials).

12      (b) CHANGE IN PERCENTAGE.—The Administrator may change the per-  
13      centage under paragraph (1) or (2) of subsection (a) if the Administrator  
14      determines that a change is necessary to reflect conventional industry prac-  
15      tices among business concerns that are below the numerical size standard  
16      for businesses in that industry category.

17      (c) REQUIREMENTS APPLICABLE TO OTHER CONTRACTS.—The Adminis-  
18      trator shall establish, through public rulemaking, requirements similar to  
19      those specified in subsection (a) to be applicable to contracts for general and  
20      specialty construction and to contracts for any other industry category not  
21      otherwise subject to the requirements of that subsection. The percentage ap-  
22      plicable to any such requirement shall be determined in accordance with  
23      subsection (b).

24     **§ 251114. Multiple award contracts**

25       The Administrator for Federal Procurement Policy and the Adminis-  
26       trator, in consultation with the Administrator of General Services, shall by  
27       regulation establish guidance under which Federal agencies may—

28       (1) set aside 1 or more parts of a multiple award contract for small  
29       business concerns, including the subcategories of small business con-  
30       cerns identified in section 251106(b) of this title;

31       (2) notwithstanding the fair opportunity requirements under section  
32       2304c(b) of title 10 and section 4106(c) of title 41, set aside orders  
33       placed against multiple award contracts for small business concerns, in-  
34       cluding the subcategories of small business concerns identified in sec-  
35       tion 251106(b) of this title; and

36       (3) reserve 1 or more contract awards for small business concerns  
37       under full and open multiple award procurements, including the sub-  
38       categories of small business concerns identified in section 251106(b) of  
39       this title.

40     **Chapter 253—HUBZone Program**



- 253101. Definitions.
- 253102. Establishment of HUBZone program.
- 253103. Sole source preference.
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- 253105. Appeal of decision not to award contract.
- 253106. Price evaluation preference in full and open competition.
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- 253108. Verification of eligibility.
- 253109. Mentor-protege program.
- 253110. Regulations.
- 253111. List of qualified HUBZone small business concerns.
- 253112. Penalties.

1     **§ 253101. Definitions**

2         In this chapter:

3             (1) **BASE CLOSURE AREA.**—The term “base closure area” means  
4         land within the external boundaries of a military installation that was  
5         closed through a privatization process under—

6                 (A) the Defense Base Closure and Realignment Act of 1990  
7                 (part A of title XXIX of division B of Public Law 101–510; 10  
8                 U.S.C. 2687 note);

9                 (B) title II of the Defense Authorization Amendments and Base  
10                 Closure and Realignment Act (Public Law 100–526; 10 U.S.C.  
11                 2687 note);

12                 (C) section 2687 of title 10; or

13                 (D) any other provision of law authorizing or directing the Sec-  
14                 retary of Defense or the Secretary of a military department to dis-  
15                 pose of real property at the military installation for purposes relat-  
16                 ing to base closures or redevelopment, while retaining the author-  
17                 ity to enter into a leaseback of all or a portion of the property  
18                 for military use.

19             (2) **FULL AND OPEN COMPETITION.**—The term “full and open com-  
20             petition” has the meaning given the term in section 107 of title 41.

21             (3) **HISTORICALLY UNDERUTILIZED BUSINESS ZONE.**—The term  
22             “historically underutilized business zone” means an area located within  
23             1 or more—

24                 (A) qualified census tracts;

25                 (B) qualified nonmetropolitan counties;

26                 (C) areas of land within the external boundaries of an Indian  
27                 reservation;

28                 (D) redesignated areas; or

29                 (E) base closure areas (until the date that is 5 years after the  
30                 date of final closure of a base closure area).

31             (4) **HUBZONE.**—The term “HUBZone” means a historically under-  
32             utilized business zone.

33             (5) **HUBZONE SMALL BUSINESS CONCERN.**—The term “HUBZone  
34             small business concern” means—

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1 (A) a small business concern that is at least 51 percent owned  
2 and controlled by United States citizens;

3 (B) a small business concern that is—

4 (i) an Alaska Native Corporation owned and controlled by  
5 Natives (as determined under section 29(e)(1) of the Alaska  
6 Native Claims Settlement Act (43 U.S.C. 1626(e)(1))); or

7 (ii) a direct or indirect subsidiary corporation, joint ven-  
8 ture, or partnership of an Alaska Native Corporation qualify-  
9 ing under section 29(e)(1) of the Alaska Native Claims Set-  
10 tlement Act (43 U.S.C. 1626(e)(1)), if that subsidiary, joint  
11 venture, or partnership is owned and controlled by Natives  
12 (as determined under section 29(e)(2) of the Alaska Native  
13 Claims Settlement Act (43 U.S.C. 1626(e)(2)));

14 (C) a small business concern—

15 (i) that is wholly owned by 1 or more Indian tribal govern-  
16 ments, or by a corporation that is wholly owned by 1 or more  
17 Indian tribal governments; or

18 (ii) that is owned in part by 1 or more Indian tribal gov-  
19 ernments, or by a corporation that is wholly owned by 1 or  
20 more Indian tribal governments, if all other owners are either  
21 United States citizens or small business concerns;

22 (D) a small business concern that is—

23 (i) wholly owned by a community development corporation  
24 that has received financial assistance under part 1 of sub-  
25 chapter A of the Community Economic Development Act of  
26 1981 (42 U.S.C. 9805 et seq.); or

27 (ii) owned in part by 1 or more community development  
28 corporations, if all other owners are either United States citi-  
29 zens or small business concerns; or

30 (E) a small business concern that is—

31 (i) a small agricultural cooperative organized or incor-  
32 porated in the United States;

33 (ii) wholly owned by 1 or more small agricultural coopera-  
34 tives organized or incorporated in the United States; or

35 (iii) owned in part by 1 or more small agricultural coopera-  
36 tives organized or incorporated in the United States, if all  
37 owners are small business concerns or United States citizens.

38 (6) PROGRAM.—The term “program” means the HUBZone program.

39 (7) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—

40 (A) IN GENERAL.—The term “qualified HUBZone small busi-  
41 ness concern” means a small business concern—

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1 (i) that certifies in writing to the Administrator (or with  
2 respect to which the Administrator otherwise determines,  
3 based on information submitted to the Administrator by the  
4 small business concern, or based on certification procedures  
5 established under section 253110 of this title) that—

6 (I) it is a HUBZone small business concern—

7 (aa) under subparagraph (A), (B), (C), (D), or  
8 (E) of paragraph (5), and its principal office is lo-  
9 cated in a HUBZone and not fewer than 35 percent  
10 of its employees reside in a HUBZone; or

11 (bb) under paragraph (5)(C), and not fewer than  
12 35 percent of its employees engaged in performing  
13 a contract awarded to the small business concern on  
14 the basis of a preference provided under the HUB-  
15 Zone program reside within any Indian reservation  
16 governed by 1 or more of the tribal government  
17 owners, or reside within any HUBZone adjoining  
18 any such Indian reservation;

19 (II) the small business concern will attempt to main-  
20 tain the applicable employment percentage under sub-  
21 clause (I) during the performance of any contract award-  
22 ed to the small business concern on the basis of a pref-  
23 erence provided under section 253103, 253104, or  
24 253106 of this title; and

25 (III) with respect to any subcontract entered into by  
26 the small business concern under a contract awarded to  
27 the small business concern under this chapter, the small  
28 business concern will ensure that—

29 (aa) in the case of a contract for a service (except  
30 construction), not less than 50 percent of the cost  
31 of contract performance incurred for personnel will  
32 be expended for its employees or for employees of  
33 other HUBZone small business concerns;

34 (bb) in the case of a contract for procurement of  
35 a supply (other than procurement from a regular  
36 dealer in the supply), not less than 50 percent of  
37 the cost of manufacturing the supply (not including  
38 the cost of material) will be incurred in connection  
39 with the performance of the contract in a HUBZone  
40 by 1 or more HUBZone small business concerns;

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(cc) in the case of a contract for general or specialty construction or a contract for any other industry category that is not otherwise subject to the requirements of item (aa) or (bb), the small business concern meets requirements established by regulation under section 253110(b) of this title; and

(dd) in the case of a contract for the procurement by the Secretary of Agriculture of an agricultural commodity, none of the commodity being procured will be obtained by the prime contractor through a subcontract for the purchase of the commodity in substantially the final form in which it is to be supplied to the Government; and

(ii) with respect to which no certification made or information provided by the small business concern under clause (i) has been, in accordance with the procedures established under section 253108 of this title—

(I) successfully challenged by an interested party; or

(II) otherwise determined by the Administrator to be materially false.

(B) CHANGE IN PERCENTAGES.—The Administrator may utilize a percentage other than the percentage specified in item (aa) or (bb) of subparagraph (A)(i)(III) if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category.

(8) QUALIFIED NONMETROPOLITAN COUNTY.—The term “qualified nonmetropolitan county” means a county—

(A) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986 (26 U.S.C. 143(k)(2)(B))) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986 (26 U.S.C. 42(d)(5)(C)(ii)); and

(B) in which—

(i) the median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce;

(ii) the unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for

the State in which the county is located, whichever is less, based on the most recent data available from the Secretary of Labor; or

(iii) there is located a difficult development area, as designated by the Secretary of Housing and Urban Development in accordance with section 42(d)(5)(C)(iii) of the Internal Revenue Code of 1986 (26 U.S.C. 42(d)(5)(C)(iii)), within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States.

(9) REDESIGNATED AREA.—

(A) IN GENERAL.—Subject to subparagraph (B), the term “re-designated area” means—

(i) a census tract that was, but ceases to be, a qualified census tract; and

(ii) a nonmetropolitan county that was, but ceases to be, a qualified nonmetropolitan county.

(B) LIMITATION.—A census tract or nonmetropolitan county described in subparagraph (A) shall cease to be a redesignated area on the later of—

(i) the date on which the Bureau of the Census publicly releases the 1st results from the 2010 decennial census; or

(ii) 3 years after the date on which the census tract or nonmetropolitan county ceases to be a qualified census tract or qualified nonmetropolitan county.

**§ 253102. Establishment of HUBZone program**

There is established within SBA a program to be carried out by the Administrator, to be known as the HUBZone program, to provide for Federal contracting assistance to qualified HUBZone small business concerns in accordance with this chapter.

**§ 253103. Sole source preference**

A contracting officer may award a sole source contract under the program to a qualified HUBZone small business concern if—

(1) the contracting officer determines that the qualified HUBZone small business concern is a responsible contractor with respect to performance of the contract opportunity;

(2) the contracting officer does not have a reasonable expectation that 2 or more qualified HUBZone small business concerns will submit offers for the contracting opportunity;

(3) the anticipated award price of the contract (including options) will not exceed—

1 (A) \$5,000,000, in the case of a contract opportunity assigned  
2 a North American Industry Classification System code for manu-  
3 facturing; or

4 (B) \$3,000,000, in the case of any other contract opportunity;  
5 and

6 (4) in the estimation of the contracting officer, the contract award  
7 can be made at a fair and reasonable price.

8 **§ 253104. Setaside preference**

9 A contract opportunity may be awarded under the program on the basis  
10 of competition restricted to qualified HUBZone small business concerns if  
11 the contracting officer has a reasonable expectation that—

12 (1) not fewer than 2 qualified HUBZone small business concerns will  
13 submit offers; and

14 (2) the award can be made at a fair market price.

15 **§ 253105. Appeal of decision not to award contract**

16 Not later than 5 days after the date on which the Administrator is noti-  
17 fied of a decision by a contracting officer of a Federal agency not to award  
18 a contract opportunity under the program to a qualified HUBZone small  
19 business concern, the Administrator may notify the contracting officer of  
20 the intent to appeal the contracting officer's decision, and within 15 days  
21 after that date the Administrator may file a written request for reconsider-  
22 ation of the contracting officer's decision with the head of the Federal agen-  
23 cy.

24 **§ 253106. Price evaluation preference in full and open com-**  
25 **petition**

26 (a) IN GENERAL.—Subject to subsection (b), in a case in which a con-  
27 tract is to be awarded on the basis of full and open competition, the price  
28 offered by a qualified HUBZone small business concern shall be deemed to  
29 be lower than the price offered by another offeror (other than another small  
30 business concern) if the price offered by the qualified HUBZone small busi-  
31 ness concern is not more than 10 percent higher than the price offered by  
32 the otherwise lowest, responsive, and responsible offeror.

33 (b) AGRICULTURAL COMMODITIES.—

34 (1) IN GENERAL.—In the case of a purchase by the Secretary of Ag-  
35 riculture of agricultural commodities, the price evaluation preference  
36 shall be—

37 (A) 10 percent for the portion of a contract to be awarded that  
38 is not greater than 25 percent of the total volume being procured  
39 for each agricultural commodity in a single invitation;

40 (B) 5 percent for the portion of a contract to be awarded that  
41 is greater than 25 percent, but not greater than 40 percent, of the

total volume being procured for each agricultural commodity in a single invitation; and

(C) zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each agricultural commodity in a single invitation.

(2) TREATMENT OF PREFERENCE.—A contract awarded to a qualified HUBZone small business concern under a preference described in paragraph (1) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to small business concerns.

(3) INTERNATIONAL FOOD AID EXPORT OPERATIONS.—The price evaluation preference for a purchase of an agricultural commodity by the Secretary of Agriculture for export operations through an international food aid program administered by the Farm Service Agency shall be 5 percent on the 1st portion of a contract to be awarded that is not greater than 20 percent of the total volume of each agricultural commodity being procured in a single invitation.

**§ 253107. Relationship to other contracting preferences**

A procurement may not be made from a source on the basis of a preference under the program if the procurement would otherwise be made from a different source under—

(1) section 4124 or 4125 of title 18; or

(2) chapter 85 of title 41.

**§ 253108. Verification of eligibility**

(a) IN GENERAL.—In carrying out this chapter, the Administrator shall establish procedures relating to—

(1) the filing, investigation, and disposition by the Administrator of any challenge to the eligibility of a small business concern to receive assistance under the program (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administrator by a small business concern under section 253101(7) of this title); and

(2) verification by the Administrator of the accuracy of any certification made or information provided to the Administrator by a small business concern under section 253101(7) of this title.

(b) EXAMINATIONS.—The procedures established under subsection (a) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under section 253101(7) of this title.

1 (c) PROVISION OF DATA.—On the request of the Administrator, the Sec-  
2 retary of Labor, the Secretary of Housing and Urban Development, and the  
3 Secretary of the Interior (or the Assistant Secretary for Indian Affairs)  
4 shall promptly provide to the Administrator such information as the Admin-  
5 istrator determines to be necessary to carry out this section.

6 **§ 253109. Mentor-protege program**

7 The Administrator may establish a mentor-protege program for HUB-  
8 Zone small business concerns modeled on the mentor-protege program for  
9 small business concerns participating in the business development program.

10 **§ 253110. Regulations**

11 (a) CERTIFICATION PROCEDURES.—The Administrator shall by regula-  
12 tion establish procedures for the certification of a small business concern  
13 as a qualified HUBZone small business concern.

14 (b) CONSTRUCTION CONTRACTS AND OTHER CONTRACTS.—The Adminis-  
15 trator shall by regulation establish requirements that are similar to the re-  
16 quirements specified in items (aa) and (bb) of section 253101(7)(A)(i)(III)  
17 of this title on contracts for general and specialty construction and contracts  
18 for any other industry category that would not otherwise be subject to those  
19 requirements. The percentage applicable to any such requirement shall be  
20 determined in accordance with section 253101(7)(B) of this title.

21 **§ 253111. List of qualified HUBZone small business concerns**

22 The Administrator shall establish and maintain a list of qualified HUB-  
23 Zone small business concerns, which list, to the extent practicable—

24 (1) after the Administrator makes the certification required by sec-  
25 tion 253101(7)(A)(i) of this title regarding a qualified HUBZone small  
26 business concern and determines that subparagraph section  
27 253101(7)(A)(ii) of this title does not apply to that qualified HUBZone  
28 small business concern, shall include the name, address, and type of  
29 business with respect to each such small business concern;

30 (2) shall be updated by the Administrator not less than annually;  
31 and

32 (3) on request, shall be provided to any Federal agency or other en-  
33 tity.

34 **§ 253112. Penalties**

35 In addition to the penalties described in section 105104 of this title, a  
36 small business concern that is determined by the Administrator to have mis-  
37 represented the status of that small business concern as a HUBZone small  
38 business concern for purposes of this section shall be subject to—

- 39 (1) section 1001 of title 18; and  
40 (2) sections 3729 to 3733 of title 31.



1 **Chapter 255—Small Business Concerns**  
2 **Owned and Controlled by Service-Dis-**  
3 **abled Veterans**

Sec.

- 255101. Sole source preference.
- 255102. Setaside preference.
- 255103. Relationship to other contracting preferences.
- 255104. Provision of data.
- 255105. Verification of eligibility.
- 255106. Mentor-protege program.
- 255107. Penalties.

4 **§ 255101. Sole source preference**

5 A contracting officer may award a sole source contract to any small busi-  
6 ness concern owned and controlled by service-disabled veterans if—

7 (1) the contracting officer determines that the small business con-  
8 cern owned and controlled by service-disabled veterans is a responsible  
9 contractor with respect to performance of the contract opportunity;

10 (2) the contracting officer does not have a reasonable expectation  
11 that 2 or more small business concerns owned and controlled by serv-  
12 ice-disabled veterans will submit offers for the contracting opportunity;

13 (3) the anticipated award price of the contract (including options)  
14 will not exceed—

15 (A) \$5,000,000, in the case of a contract opportunity assigned  
16 a North American Industry Classification System code for manu-  
17 facturing; or

18 (B) \$3,000,000, in the case of any other contract opportunity;  
19 and

20 (4) in the estimation of the contracting officer, the contract award  
21 can be made at a fair and reasonable price.

22 **§ 255102. Setaside preference**

23 A contracting officer may award a contract on the basis of competition  
24 restricted to small business concerns owned and controlled by service-dis-  
25 abled veterans if the contracting officer has a reasonable expectation that—

26 (1) not fewer than 2 small business concerns owned and controlled  
27 by service-disabled veterans will submit offers; and

28 (2) the award can be made at a fair market price.

29 **§ 255103. Relationship to other contracting preferences**

30 A procurement may not be made from a source on the basis of a pref-  
31 erence provided under section 255101 or 255102 of this title if the procure-  
32 ment would otherwise be made from a different source under—

33 (1) section 4124 or 4125 of title 18; or

34 (2) chapter 85 of title 41.

**§ 255104. Provision of data**

On the request of the Administrator, the head of any Federal agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this chapter.

**§ 255105. Verification of eligibility**

(a) IN GENERAL.—In carrying out this chapter, the Administrator shall establish procedures relating to—

(1) the filing, investigation, and disposition by the Administrator of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administrator by a small business concern); and

(2) verification by the Administrator of the accuracy of any certification made or information provided to the Administrator by a small business concern.

(b) EXAMINATIONS.—The procedures established under subsection (a) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator.

**§ 255106. Mentor-protege program**

The Administrator may establish a mentor-protege program for small business concerns owned and controlled by service-disabled veterans modeled on the mentor-protege program for small business concerns participating in the business development program.

**§ 255107. Penalties**

In addition to the penalties described in section 105104 of this title, a small business concern that is determined by the Administrator to have misrepresented the status of the small business concern as a small business concern owned and controlled by service-disabled veterans for purposes of this chapter shall be subject to—

(1) section 1001 of title 18; and

(2) sections 3729 to 3733 of title 31.

## **Chapter 257—Small Business Concerns Owned and Controlled by Women**

Sec.

257101. Definition of small business concern owned and controlled by women.

257102. Restricted competition.

257103. Identification of industries.

257104. Provision of data.

257105. Verification of eligibility.

257106. Mentor-protege program.

257107. Penalties.

1    **§257101. Definition of small business concern owned and**  
2                   **controlled by women**

3       In this chapter, the term “small business concern owned and controlled  
4    by women” has the meaning given the term in section 101102 of this title,  
5    except that ownership shall be determined without regard to any community  
6    property law.

7    **§257102. Restricted competition**

8       (a) IN GENERAL.—A contracting officer may restrict competition for any  
9    contract for the procurement of a good or service by the Federal Govern-  
10   ment to small business concerns owned and controlled by women if—

11       (1) each of the small business concerns owned and controlled by  
12       women is not less than 51 percent owned by 1 or more women who  
13       are economically disadvantaged (for which purpose ownership shall be  
14       determined without regard to any community property law);

15       (2) the contracting officer has a reasonable expectation that 2 or  
16       more small business concerns owned and controlled by economically dis-  
17       advantaged women will submit offers for the contract;

18       (3) the contract is for the procurement of a good or service with re-  
19       spect to an industry identified by the Administrator under section  
20       257103 of this title;

21       (4) the anticipated award price of the contract (including options)  
22       does not exceed—

23           (A) \$5,000,000, in the case of a contract assigned a North  
24           American Industry Classification System code for manufacturing;  
25           or

26           (B) \$3,000,000, in the case of any other contract;

27       (5) in the estimation of the contracting officer, the contract award  
28       can be made at a fair and reasonable price; and

29       (6) each of the small business concerns owned and controlled by  
30       women—

31           (A) is certified by a Federal agency, a State government, or a  
32           national certifying entity approved by the Administrator, as a  
33           small business concern owned and controlled by women; or

34           (B)(i) certifies to the contracting officer that it is a small busi-  
35           ness concern owned and controlled by women; and

36           (ii) provides adequate documentation, in accordance with stand-  
37           ards established by the Administrator, to support the certification.

38       (b) WAIVER.—The Administrator may waive subsection (a)(1) with re-  
39       spect to a small business concern owned and controlled by women if the Ad-  
40       ministrator determines that the small business concern owned and controlled

1 by women is in an industry in which small business concerns owned and  
2 controlled by women are substantially underrepresented.

3 **§ 257103. Identification of industries**

4 The Administrator shall conduct a study to identify industries in which  
5 small business concerns owned and controlled by women are under-  
6 represented with respect to Federal agency procurement contracting.

7 **§ 257104. Provision of data**

8 On the request of the Administrator, the head of a Federal agency shall  
9 promptly provide to the Administrator such information as the Adminis-  
10 trator determines to be necessary to carry out this chapter.

11 **§ 257105. Verification of eligibility**

12 (a) IN GENERAL.—In carrying out this chapter, the Administrator shall  
13 establish procedures relating to—

14 (1) the filing, investigation, and disposition by the Administrator of  
15 any challenge to the eligibility of a small business concern to receive  
16 assistance under this chapter (including a challenge, filed by an inter-  
17 ested party, relating to the veracity of a certification made or informa-  
18 tion provided to the Administrator by a small business concern under  
19 section 257102(a)(6) of this title); and

20 (2) verification by the Administrator of the accuracy of any certifi-  
21 cation made or information provided to the Administrator by a small  
22 business concern under section 257102(a)(6) of this title.

23 (b) EXAMINATIONS.—The procedures established under subsection (a)  
24 may provide for program examinations (including random program examina-  
25 tions) by the Administrator of any small business concern making a certifi-  
26 cation or providing information to the Administrator under section  
27 257102(a)(6) of this title.

28 **§ 257106. Mentor-protege program**

29 The Administrator may establish a mentor-protege program for small  
30 business concerns owned and controlled by women modeled on the mentor-  
31 protege program for small business concerns participating in the business  
32 development program.

33 **§ 257107. Penalties**

34 In addition to the penalties described in section 105104 of this title, a  
35 small business concern that is determined by the Administrator to have mis-  
36 represented the status of the small business concern as a small business  
37 concern owned and controlled by women for purposes of this chapter shall  
38 be subject to—

39 (1) section 1001 of title 18; and

40 (2) sections 3729 to 3733 of title 31.

**Division I—Research and Development**  
**Chapter 261—General Provisions**

Sec.

261101. Definitions.

261102. Assistance to small business concerns.

261103. Federal agency cooperation.

261104. Joint research and development programs.

**§ 261101. Definitions**

In this division:

(1) **COMMERCIAL APPLICATION.**—The term “commercial application” includes testing and evaluation of products, services, or technologies for use in technical or weapons systems.

(2) **COMMERCIALIZATION.**—The term “commercialization” means—

(A) the process of developing a product, process, technology, or service; and

(B) the production and delivery (whether by the originating party or by others) of a product, process, technology, or service for sale to or use by the Federal Government or a commercial market.

(3) **COOPERATIVE RESEARCH AND DEVELOPMENT.**—The term “cooperative research and development” means research or research and development conducted jointly by a small business concern and a research institution in which not less than 40 percent of the work is performed by the small business concern and not less than 30 percent of the work is performed by the research institution.

(4) **EXTRAMURAL BUDGET.**—

(A) **IN GENERAL.**—The term “extramural budget”, in reference to the extramural budget of a Federal agency, means the sum of the total obligations of the Federal agency for research and research and development activities minus amounts obligated for research or research and development by employees of the Federal agency in or through Government-owned, Government-operated facilities.

(B) **APPLICABILITY TO DEPARTMENT OF ENERGY.**—As applied with respect to the Department of Energy, the term “extramural budget” does not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs.

(C) **APPLICABILITY TO AGENCY FOR INTERNATIONAL DEVELOPMENT.**—As applied to the Agency for International Development, the term “extramural budget” does not include amounts obligated

1           solely for general institutional support of international research  
2           centers or for grants to foreign countries.

3       (5) FEDERAL AGENCY.—

4           (A) IN GENERAL.—The term “Federal agency” means—

5               (i) an executive agency (as defined in section 105 of title  
6               5); or

7               (ii) a military department.

8           (B) EXCLUSION.—The term “Federal agency” does not include  
9           an agency within the Intelligence Community (as defined in sec-  
10          tion 3.4(f) of Executive Order 12333 (50 U.S.C. 401 note) (or any  
11          successor Executive order)).

12       (6) FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER.—

13       The term “Federally funded research and development center” means  
14       a federally funded research and development center identified by the  
15       National Scientific Foundation in accordance with the Governmentwide  
16       Federal Acquisition Regulation (or any successor regulation).

17       (7) FUNDING AGREEMENT.—The term “funding agreement” means  
18       a contract, grant, or cooperative agreement entered into between a  
19       Federal agency and a small business concern for the performance of  
20       experimental, developmental, or research work funded in whole or in  
21       part by the Federal Government.

22       (8) PHASE I.—The term “phase I”—

23           (A) with respect to an SBIR program, means the phase de-  
24           scribed in paragraph (17)(A); and

25           (B) with respect to an STTR program, means the phase de-  
26           scribed in paragraph (18)(A).

27       (9) PHASE II.—The term “phase II”—

28           (A) with respect to an SBIR program, means the phase de-  
29           scribed in paragraph (17)(B); and

30           (B) with respect to an STTR program, means the phase de-  
31           scribed in paragraph (18)(B).

32       (10) PHASE III.—The term “phase III”—

33           (A) with respect to an SBIR program, means the phase de-  
34           scribed in paragraph (17)(C); and

35           (B) with respect to an STTR program, means the phase de-  
36           scribed in paragraph (18)(C).

37       (11) PHASE III AGREEMENT.—The term “phase III agreement”  
38       means a follow-on, non-SBIR program-funded contract or non-STTR  
39       program-funded contract described in paragraph (17)(C) or (18)(C).

40       (12) RESEARCH INSTITUTION.—

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1 (A) IN GENERAL.—The term “research institution” means a  
2 nonprofit institution (as defined in section 4 of the Stevenson-  
3 Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703)).

4 (B) INCLUSION.—The term “research institution” includes a  
5 federally funded research and development center.

6 (13) RESEARCH OR RESEARCH AND DEVELOPMENT.—The term “re-  
7 search or research and development” means an activity that is—

8 (A) a systematic, intensive study directed toward greater knowl-  
9 edge or understanding of the subject studied;

10 (B) a systematic study directed specifically toward applying new  
11 knowledge to meet a recognized need; or

12 (C) a systematic application of knowledge toward the production  
13 of useful materials, devices, and systems or methods, including de-  
14 sign, development, and improvement of prototypes and new proc-  
15 esses to meet specific requirements.

16 (14) SBIR AGENCY.—The term “SBIR agency” means a Federal  
17 agency that is required by section 263101 of this title to have an SBIR  
18 program.

19 (15) SBIR PARTICIPATING AGENCY.—The term “SBIR participating  
20 agency” means—

21 (A) an SBIR agency; and

22 (B) any other Federal agency that participates in the SBIR  
23 program.

24 (16) SBIR PROGRAM.—The term “SBIR program” means a small  
25 business innovation research program.

26 (17) SMALL BUSINESS INNOVATION RESEARCH PROGRAM.—The term  
27 “small business innovation research program” means a program under  
28 which a portion of a Federal agency’s research or research and develop-  
29 ment effort is reserved for award to small business concerns through  
30 a uniform process having—

31 (A) a 1st phase for determining, insofar as possible, the sci-  
32 entific and technical merit and feasibility of ideas that appear to  
33 have commercial potential, as described in subparagraph (B), sub-  
34 mitted pursuant to SBIR program solicitations;

35 (B) a 2d phase, to further develop proposals that meet particu-  
36 lar program needs—

37 (i) in which awards (including awards for testing and eval-  
38 uation of products, services, or technologies for use in tech-  
39 nical or weapons systems) shall be made based on the sci-  
40 entific and technical merit and feasibility of the proposals, as

1 evidenced by the 1st phase, considering, among other things,  
2 the proposal's commercial potential, as evidenced by—

3 (I) the small business concern's record of successfully  
4 commercializing SBIR program research or other re-  
5 search;

6 (II) the existence of phase II funding commitments  
7 from private sector or non-SBIR program funding  
8 sources;

9 (III) the existence of phase III, follow-on commitments  
10 for the subject of the research; and

11 (IV) the presence of other indicators of the commercial  
12 potential of the idea; and

13 (ii) that does not include any invitation, prescreening, or  
14 preselection process for eligibility; and

15 (C) where appropriate, a 3d phase for work that derives from,  
16 extends, or completes efforts made under prior funding agree-  
17 ments under the SBIR program—

18 (i) in which commercial applications of SBIR program-  
19 funded research or research and development are funded—

20 (I) by non-Federal sources of capital; or

21 (II) for products or services intended for use by the  
22 Federal Government, by follow-on non-SBIR program  
23 Federal funding awards; or

24 (ii) for which awards from non-SBIR program Federal  
25 funding sources are used for the continuation of research or  
26 research and development that has been competitively selected  
27 using peer review or merit-based selection procedures.

28 (18) SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM.—The  
29 term “small business technology transfer program” means a program  
30 under which a portion of a Federal agency's extramural research or re-  
31 search and development effort is reserved for award to small business  
32 concerns for cooperative research and development through a uniform  
33 process having—

34 (A) a 1st phase, to determine, to the extent possible, the sci-  
35 entific, technical, and commercial merit and feasibility of ideas  
36 submitted pursuant to STTR program solicitations;

37 (B) a 2d phase, to further develop proposed ideas to meet par-  
38 ticular program needs—

39 (i) in which awards (including awards for testing and eval-  
40 uation of products, services, or technologies for use in tech-  
41 nical or weapons systems) shall be made based on the sci-



entific, technical, and commercial merit and feasibility of the idea, as evidenced by the 1st phase and by other relevant information; and

(ii) that does not include any invitation, prescreening, or preselection process for eligibility; and

(C) where appropriate, a 3d phase for work that derives from, extends, or completes efforts made under prior funding agreements under the STTR program—

(i) in which commercial applications of STTR program-funded research or research and development are funded—

(I) by non-Federal sources of capital; or

(II) for products or services intended for use by the Federal Government, by follow-on non-STTR program Federal funding awards; and

(ii) for which awards from non-STTR program Federal funding sources are used for the continuation of research or research and development that has been competitively selected using peer review or scientific review criteria.

(19) STTR AGENCY.—The term “STTR agency” means a Federal agency that is required by section 263201 of this title to have an STTR program.

(20) STTR PARTICIPATING AGENCY.—The term “STTR participating agency” means—

(A) an STTR agency; and

(B) any other Federal agency that participates in the STTR program.

(21) STTR PROGRAM.—The term “STTR program” means a small business technology transfer program.

## **§ 261102. Assistance to small business concerns**

The Administrator shall—

(1) assist small business concerns in obtaining Government contracts for research and development;

(2) assist small business concerns in obtaining the benefits of research and development performed under Government contracts or at Government expense;

(3) provide technical assistance to small business concerns to accomplish the purposes of this division;

(4) develop and maintain a source file and an information program to assure each qualified and interested small business concern the opportunity to participate in Federal agency SBIR programs and STTR programs;

(5) coordinate with participating Federal agencies a schedule for release of SBIR program and STTR program solicitations, and prepare a master release schedule so as to maximize the opportunity of small business concerns to respond to solicitations;

(6) independently survey and monitor the operation of SBIR programs and STTR programs within participating Federal agencies;

(7) provide for and fully implement the tenets of Executive Order 13329 (Encouraging Innovation in Manufacturing); and

(8) coordinate the implementation of electronic databases at each of the Federal agencies participating in the SBIR program or STTR program, including the technical ability of the participating agencies to share data electronically.

### **§ 261103. Federal agency cooperation**

The Administrator may consult and cooperate with, and make studies and recommendations to, all Federal agencies and the Government Accountability Office, and a Federal agency or the Government Accountability Office shall cooperate with the Administrator in order to carry out and to accomplish the purposes of this division.

### **§ 261104. Joint research and development programs**

(a) IN GENERAL.—The Administrator may consult with representatives of small business concerns with a view to assisting and encouraging small business concerns in undertaking joint programs for research and development carried out through such corporate or other mechanism as may be most appropriate for the purpose.

(b) PURPOSES.—A joint program under subsection (a) may, among other things, include the purposes of—

(1) constructing, acquiring, or establishing a laboratory or other facility for the conduct of research;

(2) undertaking and utilizing applied research;

(3) collecting research information related to a particular industry and disseminating the information to participating members;

(4) conducting applied research on a protected, proprietary, and contractual basis with member or nonmember concerns, Federal agencies, the Government Accountability Office, and others;

(5) prosecuting applications for patents and rendering patent services for participating members; and

(6) negotiating and granting licenses under patents held under the joint program and establishing corporations designed to exploit particular patents obtained by the corporations.

(c) APPROVAL OF AGREEMENTS.—After consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the

1 prior written approval of the Attorney General, the Administrator may ap-  
2 prove an agreement between small business concerns providing for a joint  
3 program of research and development if the Administrator determines that  
4 the joint program proposed will maintain and strengthen the free enterprise  
5 system and the economy of the Nation.

6 (d) WITHDRAWAL OF APPROVAL.—The Administrator or the Attorney  
7 General may at any time withdraw approval of the agreement and the joint  
8 program of research and development covered by the agreement if the Ad-  
9 ministrator or Attorney General determines that the agreement or the joint  
10 program is no longer in the best interests of the competitive free enterprise  
11 system and the economy of the Nation.

12 (e) PUBLICATION IN FEDERAL REGISTER.—A copy of the following shall  
13 be published in the Federal Register:

14 (1) An approval under subsection (c) of an agreement between small  
15 business concerns providing for a joint program of research and devel-  
16 opment and an accompanying determination by the Administrator that  
17 the joint program proposed will maintain and strengthen the free enter-  
18 prise system and the economy of the Nation.

19 (2) A withdrawal of approval of a joint agreement and the joint pro-  
20 gram of research and development covered by the agreement and an  
21 accompanying determination by the Administrator or Attorney General  
22 that the agreement or the joint program is no longer in the best inter-  
23 ests of the competitive free enterprise system and the economy of the  
24 Nation.

25 (3) A modification of an approval described in paragraph (1).

26 (f) NONDELEGABILITY.—The authority of the Administrator under this  
27 section may not be delegated.

28 (g) NO VIOLATION OF ANTITRUST LAWS OR FEDERAL TRADE COMMIS-  
29 SION ACT.—

30 (1) IN GENERAL.—Subject to paragraph (2), no act or omission to  
31 act pursuant to and within the scope of a joint program for research  
32 and development under an agreement approved by the Administrator  
33 under this section shall be within the prohibitions of the antitrust laws  
34 or the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

35 (2) WITHDRAWAL OF APPROVAL.—On publication in the Federal  
36 Register of the notice of withdrawal of approval of an agreement grant-  
37 ed under this section, by the Administrator or by the Attorney General,  
38 this section shall not apply to any subsequent act or omission to act  
39 by reason of the agreement or the approval.

# Chapter 263—SBIR Programs and STTR Programs

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- 263322. Publication of information relating to notice of and application for SBIR awards and STTR awards.

## Subchapter I—SBIR Programs

### § 263101. Required expenditure amounts

(a) SBIR PROGRAM BUDGET.—Except as provided in subsection (b)(2), a Federal agency that has an extramural budget for research or research and development in excess of \$100,000,000 for any fiscal year shall expend with small business concerns, specifically in connection with an SBIR program that meets the requirements of this division (including policy directives under section 263104 of this title)—

- (1) not less than 2.7 percent of the extramural budget in fiscal year 2013;

1 (2) not less than 2.8 percent of the extramural budget in fiscal year  
2 2014;

3 (3) not less than 2.9 percent of the extramural budget in fiscal year  
4 2015;

5 (4) not less than 3.0 percent of the extramural budget in fiscal year  
6 2016; and

7 (5) not less than 3.2 percent of the extramural budget in fiscal year  
8 2017 and each fiscal year thereafter.

9 (b) LIMITATIONS.—An SBIR agency shall not—

10 (1) make available for the purpose of meeting the requirements of  
11 subsection (a) an amount of its extramural budget for basic research  
12 that exceeds the percentage specified in subsection (a); or

13 (2) after September 30, 2015, use any of its SBIR program budget  
14 established under subsection (a) for the purpose of funding administra-  
15 tive costs of the program, including costs associated with salaries and  
16 expenses.

17 (c) EXCLUSION OF CERTAIN FUNDING AGREEMENTS.—A funding agree-  
18 ment with a small business concern for research or research and develop-  
19 ment that results from a competitive or single source selection other than  
20 an SBIR program shall not be considered to meet any portion of the per-  
21 centage requirement of subsection (a).

22 (d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed  
23 to prohibit a Federal agency from expending with small business concerns  
24 an amount of the extramural budget for research or research and develop-  
25 ment of the agency that exceeds the amount required under subsection (a).

26 **§ 263102. Administration by Federal agencies**

27 (a) IN GENERAL.—An SBIR agency shall, in accordance with this divi-  
28 sion (including policy directives under section 263104 of this title)—

29 (1) unilaterally determine categories of projects to be in its SBIR  
30 program;

31 (2) issue SBIR program solicitations in accordance with a schedule  
32 determined cooperatively with the Administrator;

33 (3) unilaterally determine research topics within the SBIR agency's  
34 SBIR program solicitations, giving special consideration to broad re-  
35 search topics and to topics that further 1 or more critical technologies,  
36 as identified by—

37 (A) the National Critical Technologies Panel in the reports re-  
38 quired under section 603 of the National Science and Technology  
39 Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683)  
40 (as in effect before January 1, 2001); or

- 1 (B) the Secretary of Defense, in the reports required under sec-  
2 tion 2522 of title 10 (as in effect before February 10, 1996);  
3 (4)(A) unilaterally receive and evaluate proposals resulting from  
4 SBIR program proposals; and  
5 (B) make a final decision on each proposal submitted under the  
6 SBIR program—  
7 (i)(I) in the case of the National Institutes of Health or the  
8 National Science Foundation, not later than 1 year after the  
9 date on which the applicable solicitation closes; or  
10 (II) in the case of SBIR participating agency, not later  
11 than 90 days after the date on which the applicable solicita-  
12 tion closes; or  
13 (ii) if the Administrator authorizes an extension with re-  
14 spect to a solicitation, not later than 90 days after the date  
15 that would otherwise be applicable to the agency under clause  
16 (i);  
17 (5) subject to section 263111(b) of this title—  
18 (A) unilaterally select awardees for its SBIR program funding  
19 agreements; and  
20 (B) inform each awardee under a funding agreement, to the ex-  
21 tent possible, of the expenses of the awardee that will be allowable  
22 under the funding agreement;  
23 (6) administer its own SBIR program funding agreements (or dele-  
24 gate such administration to another Federal agency);  
25 (7)(A) make payments to recipients of SBIR program funding agree-  
26 ments on the basis of progress toward or completion of the funding  
27 agreement requirements; and  
28 (B) in all cases, make payment to recipients under such agreements  
29 in full, subject to audit, on or before the last day of the 12-month pe-  
30 riod beginning on the date of completion of the funding agreement re-  
31 quirements;  
32 (8) collect annually, and maintain in a common format in accordance  
33 with the simplified reporting requirements under section 263304 of this  
34 title, such information from awardees as is necessary to assess the  
35 SBIR program, including information necessary to maintain the data-  
36 base under section 263301 of this title, including—  
37 (A) whether an awardee—  
38 (i) has venture capital, hedge fund, or private equity firm  
39 investment or is majority-owned by multiple venture capital  
40 operating companies, hedge funds, or private equity firms  
41 and, if so—

1 (I) the amount of venture capital, hedge fund, or pri-  
2 vate equity firm investment that the awardee has re-  
3 ceived as of the date of the award; and

4 (II) the amount of additional capital that the awardee  
5 has invested in the SBIR technology;

6 (ii) has an investor that—

7 (I) is an individual who is not a citizen of the United  
8 States or a lawful permanent resident of the United  
9 States and, if so, the name of any such individual; or

10 (II) is a person that is not an individual and is not  
11 organized under the laws of a State or the United States  
12 and, if so, the name of any such person;

13 (iii) is owned by a woman or has a woman as a principal  
14 investor;

15 (iv) is owned by a socially or economically disadvantaged  
16 individual or has a socially disadvantaged individual or eco-  
17 nomically disadvantaged individual as a principal investor;

18 (v) is a faculty member or a student at an institution of  
19 higher education (as defined in section 101 of the Higher  
20 Education Act of 1965 (20 U.S.C. 1001); or

21 (vi) is located in a State described in section 263105(c) of  
22 this title;

23 (B) a justification statement from the agency, if an awardee re-  
24 ceives an award in an amount that is more than the award guide-  
25 lines under this division; and

26 (C) data with respect to the FAST program;

27 (9)(A) include a section on its SBIR program in its annual perform-  
28 ance plan required by subsections (a) and (b) of section 1115 of title  
29 31; and

30 (B) submit that section to the Committee on Small Business and  
31 Entrepreneurship of the Senate and the Committee on Science and  
32 Committee on Small Business of the House of Representatives;

33 (10) provide for and fully implement the tenets of Executive Order  
34 13329 (Encouraging Innovation in Manufacturing); and

35 (11) provide timely notice to the Administrator of any case or con-  
36 troversy before any Federal judicial or administrative tribunal concern-  
37 ing the SBIR program of the SBIR agency.

38 (b) RESEARCH AND DEVELOPMENT FOCUS.—

39 (1) REVISION AND UPDATE OF CRITERIA AND PROCEDURES OF  
40 IDENTIFICATION.—In carrying out subsection (a), the Secretary of De-  
41 fense shall, not less often than once every 4 years, revise and update

the criteria and procedures used to identify areas of the research and development efforts of the Department of Defense that are suitable for the provision of funds under the SBIR program and the STTR program of the Department of Defense.

(2) USE OF PLANS.—The criteria and procedures described in paragraph (1) shall be developed through the use of the most current versions of the following plans:

(A) The Joint Warfighting Science and Technology Plan required under section 270 of the National Defense Authorization Act for Fiscal Year 1997 (10 U.S.C. 2501 note; Public Law 104–201).

(B) The Defense Technology Area Plan of the Department of Defense.

(C) The Basic Research Plan of the Department of Defense.

(3) INPUT IN IDENTIFICATION OF AREAS OF EFFORT.—The criteria and procedures described in paragraph (1) shall include input in the identification of areas of research and development efforts described in that paragraph from Department of Defense program managers and program executive officers.

#### **§ 263103. Funding agreement goals**

(a) IN GENERAL.—A Federal agency that has an extramural budget for research or research and development in excess of \$20,000,000 for any fiscal year shall establish goals specifically for funding agreements for research or research and development to small business concerns.

(b) NO BACKSLIDING.—No goal established by a Federal agency under subsection (a) shall be less than the percentage of the Federal agency's research or research and development budget expended under funding agreements with small business concerns in the immediately preceding fiscal year.

#### **§ 263104. Policy directives**

(a) IN GENERAL.—The Administrator, after consultation with the Administrator for Federal Procurement Policy, the Director of the Office of Science and Technology Policy, and the Intergovernmental Affairs Division of the Office of Management and Budget, shall issue policy directives for the general conduct of the SBIR programs within the Federal Government.

(b) MATTERS TO BE PROVIDED FOR.—Policy directives under subsection (a) shall provide for—

(1) simplified, standardized, and timely SBIR program solicitations;

(2) a simplified, standardized funding process that provides for—

(A) the timely receipt and review of proposals;

(B) outside peer review for at least phase two proposals, if appropriate;



- 1 (C) protection of proprietary information provided in proposals;
- 2 (D) selection of awardees;
- 3 (E) retention by a small business concern of the rights to data
- 4 generated by the small business concern in the performance of an
- 5 SBIR award for a period of not less than 4 years (without regard
- 6 to whether the small business concern continues to qualify as a
- 7 small business concern for all of that period);
- 8 (F) transfer of title to property provided by a Federal agency
- 9 to a small business concern if such a transfer would be more cost
- 10 effective than recovery of the property by the Federal agency;
- 11 (G) cost sharing; and
- 12 (H) cost principles and payment schedules;
- 13 (3) exemptions from the policy directives under paragraph (2) if na-
- 14 tional security or intelligence functions clearly would be jeopardized;
- 15 (4) minimizing the regulatory burden associated with participation in
- 16 an SBIR program for a small business concern so as to stimulate the
- 17 cost-effective conduct of Federal research and development and the
- 18 likelihood of commercialization of the results of research and develop-
- 19 ment conducted under the SBIR program;
- 20 (5) the submission by a Federal agency to the Administrator and the
- 21 Office of Science and Technology Policy of a simplified, standardized,
- 22 and timely annual report on its SBIR program;
- 23 (6) standardized and orderly withdrawal from SBIR program partici-
- 24 pation by a Federal agency;
- 25 (7) the voluntary participation in an SBIR program by a Federal
- 26 agency not required by section 263101 of this title to have an SBIR
- 27 program;
- 28 (8) continued use by a small business concern participating in phase
- 29 III of an SBIR program, as a directed bailment, of any property trans-
- 30 ferred by a Federal agency to the small business concern in phase II
- 31 of an SBIR program for a period of not less than 2 years, beginning
- 32 on the initial date of the small business concern's participation in phase
- 33 III of an SBIR program;
- 34 (9) procedures to ensure, to the extent practicable, that a Federal
- 35 agency that intends to pursue research, development, or production of
- 36 a technology developed by a small business concern under an SBIR
- 37 program enters into a follow-on, non-SBIR program funding agreement
- 38 with the small business concern for the research, development, or pro-
- 39 duction;
- 40 (10) thresholds in the amounts of funds that a Federal agency may
- 41 award of \$150,000 (which amount the Administrator shall adjust an-

1 nually for inflation) in phase I of an SBIR program and \$1,000,000  
2 in phase II of an SBIR program (which amount the Administrator  
3 shall adjust annually for inflation);

4 (11) a process for notifying SBIR agencies and potential SBIR pro-  
5 gram participants of the critical technologies, as identified—

6 (A) by the National Critical Technologies Panel in accordance  
7 with section 603 of the National Science and Technology Policy,  
8 Organization, and Priorities Act of 1976 (42 U.S.C. 6683) (as in  
9 effect before January 1, 2001); or

10 (B) by the Secretary of Defense in accordance with section  
11 2522 of title 10 (as in effect before February 10, 1996);

12 (12)(A) enhanced outreach efforts to increase the participation of  
13 small business concerns owned and controlled by socially and economi-  
14 cally disadvantaged individuals and the participation of small business  
15 concerns owned and controlled by women in technological innovation  
16 and in SBIR programs, including phase III of SBIR programs; and

17 (B) the collection of data to document that participation;

18 (13) technical and programmatic guidance to encourage Federal  
19 agencies to develop gap-funding programs to address the delay between  
20 an award for phase I of an SBIR program and the application for and  
21 extension of an award for phase II of the SBIR program;

22 (14) procedures to ensure that a small business concern that submits  
23 a proposal for a funding agreement for phase I of an SBIR program  
24 and that has received more than 15 phase II SBIR awards during the  
25 preceding 5 fiscal years is able to demonstrate the extent to which the  
26 small business concern was able to secure phase III funding to develop  
27 concepts resulting from previous phase II SBIR awards;

28 (15) the requirement of a succinct commercialization plan with each  
29 application for a phase II SBIR award that is moving toward commer-  
30 cialization;

31 (16) a requirement that a Federal agency report to the Adminis-  
32 trator, not less frequently than annually, all instances in which the  
33 Federal agency pursued research, development, or production of a tech-  
34 nology developed by a small business concern using an award made  
35 under the SBIR program of the Federal agency and determined that  
36 it was not practicable to enter into a follow-on non-SBIR program  
37 funding agreement with the small business concern; and

38 (17) implementation of section 263304 of this title, including estab-  
39 lishing standardized procedures for the provision of information under  
40 section 263301(c) of this title.

(c) PHASED WITHDRAWAL FROM SBIR PROGRAM.—At the discretion of the Administrator, the policy directive under subsection (b)(6) may require a phased withdrawal over a period of time sufficient in duration to minimize any adverse impact on small business concerns.

(d) RIGHTS TO DATA.—The rights provided for under subsection (b)(1)(E) shall apply to all Federal funding awards under this division, including phase I, phase II, and phase III awards.

(e) REPORTS ON IMPRACTICABILITY OF FOLLOW-ON AGREEMENTS.—A report under subsection (b)(16) shall include, at a minimum—

(1) the reasons why the follow-on funding agreement with the small business concern was not practicable;

(2) the identity of the entity with which the Federal agency contracted to perform the research, development, or production; and

(3) a description of the type of funding agreement under which the research, development, or production was obtained.

#### **§ 263105. Coordination of technology development programs**

(a) DEFINITION OF TECHNOLOGY DEVELOPMENT PROGRAM.—In this section, the term “technology development program” means—

(1) the Experimental Program to Stimulate Competitive Research of the National Science Foundation, as established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g);

(2) the Defense Experimental Program to Stimulate Competitive Research of the Department of Defense;

(3) the Experimental Program to Stimulate Competitive Research of the Department of Energy;

(4) the Experimental Program to Stimulate Competitive Research of the Environmental Protection Agency;

(5) the Experimental Program to Stimulate Competitive Research of the National Aeronautics and Space Administration;

(6) the Institutional Development Award Program of the National Institutes of Health; and

(7) the National Research Initiative Competitive Grants Program of the Department of Agriculture.

(b) COORDINATION REQUIREMENTS.—An SBIR agency that establishes a technology development program may, in each fiscal year, review for funding under the technology development program—

(1) a proposal to provide outreach and assistance to 1 or more small business concerns interested in participating in the Federal agency’s SBIR program (including a proposal to make a grant or loan to a business concern to pay a portion or all of the cost of developing an SBIR

1           program proposal) from an entity, organization, or individual located  
2           in—

3                   (A) a State that is eligible to participate in the technology devel-  
4                   opment program; or

5                   (B) a State described in subsection (c); or

6           (2) a proposal for phase I of the SBIR program (if the proposal,  
7           though meritorious, is not funded through the SBIR program for that  
8           fiscal year due to funding restraints) from a small business concern lo-  
9           cated in—

10                   (A) a State that is eligible to participate in the technology devel-  
11                   opment program; or

12                   (B) a State described in subsection (c).

13           (c) **ADDITIONALLY ELIGIBLE STATE.**—A State referred to in paragraph  
14           (1)(B) or (2)(B) of subsection (b) is a State in which the total value of con-  
15           tracts awarded to small business concerns under all SBIR programs is less  
16           than the total value of contracts awarded to small business concerns in a  
17           majority of other States, as determined by the Administrator in even-num-  
18           bered fiscal years, based on the most recent statistics compiled by the Ad-  
19           ministrator.

20           (d) **COORDINATION OF THE SBIR PROGRAM AND THE EXPERIMENTAL**  
21           **PROGRAM TO STIMULATE COMPETITIVE RESEARCH.**—The head of a Fed-  
22           eral agency that participates in the SBIR program and the Experimental  
23           Program to Stimulate Competitive Research or the Institutional Develop-  
24           ment Award Program shall coordinate, to the extent possible, the initiatives  
25           of the agency with respect to those programs.

26           **§ 263106. Purchase of American-made equipment and prod-**  
27           **ucts**

28           (a) **PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.**—It is  
29           the sense of Congress that an entity that is awarded a funding agreement  
30           under the SBIR program of a Federal agency should, when purchasing any  
31           equipment or a product with funds provided through the funding agreement,  
32           purchase only American-made equipment and products, to the extent pos-  
33           sible in keeping with the overall purposes of the SBIR program.

34           (b) **NOTICE TO SBIR AWARDEES.**—A Federal agency that awards a fund-  
35           ing agreement under an SBIR program shall provide to each recipient of  
36           such an award a notice describing the sense of the Congress stated in sub-  
37           section (a).

38           **§ 263107. Use of Department of Agriculture extramural**  
39           **budget funds**

40           All funds appropriated that are determined to be part of the extramural  
41           budget of the Department of Agriculture for any fiscal year for purposes

1 of meeting the requirements of this division shall be available for funding  
2 agreements with small business concerns for any purpose in furtherance of  
3 the SBIR program of the Department of Agriculture. Such funds may be  
4 transferred for that purpose from 1 appropriation account to another or to  
5 a single account.

6 **§ 263108. Phase flexibility**

7 During fiscal years 2012 through 2017, the National Institutes of Health,  
8 the Department of Defense, and the Department of Education may each  
9 provide to a small business concern an award under phase II of the SBIR  
10 program with respect to a project, without regard to whether the small busi-  
11 ness concern was provided an award under phase I of an SBIR program  
12 with respect to the project, if the head of the applicable agency determines  
13 that the small business concern has completed the determinations described  
14 in section 261101(17)(A) of this title with respect to the project despite not  
15 having been provided a phase I award.

16 **§ 263109. Participation of small business concerns that are**  
17 **majority-owned by venture capital operating com-**  
18 **panies, hedge funds, or private equity firms in the**  
19 **SBIR program**

20 (a) IN GENERAL.—On providing a written determination described in  
21 subsection (b) to the Administrator, the Committee on Small Business and  
22 Entrepreneurship of the Senate, and the Committee on Small Business and  
23 Committee on Science, Space, and Technology of the House of Representa-  
24 tives, not later than 30 days before the date on which any such award is  
25 made—

26 (1) the Director of the National Institutes of Health, the Secretary  
27 of Energy, and the Director of the National Science Foundation may  
28 award not more than 25 percent of the funds allocated for the SBIR  
29 program of the applicable Federal agency to small business concerns  
30 that are majority-owned by multiple venture capital operating compa-  
31 nies, hedge funds, or private equity firms through competitive, merit-  
32 based procedures that are open to all eligible small business concerns;  
33 and

34 (2) the head of an SBIR participating agency other than a Federal  
35 agency described in paragraph (1) may award not more than 15 per-  
36 cent of the funds allocated for the SBIR program of the Federal agen-  
37 cy to small business concerns that are majority-owned by multiple ven-  
38 ture capital operating companies, hedge funds, or private equity firms  
39 through competitive, merit-based procedures that are open to all eligi-  
40 ble small business concerns.

(b) DETERMINATION.—A written determination described in this subsection is a written determination by the head of a Federal agency that explains how the use of the authority under subsection (a) will—

- (1) induce additional venture capital, hedge fund, or private equity firm funding of small business innovations;
- (2) substantially contribute to the mission of the Federal agency;
- (3) demonstrate a need for public research; and
- (4) otherwise fulfill the capital needs of small business concerns for additional financing for SBIR projects.

(c) REGISTRATION.—A small business concern that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and qualified for participation in the program authorized under subsection (a) shall—

- (1) register with the Administrator on the date on which the small business concern submits an application for an award under the SBIR program; and
- (2) indicate in any SBIR proposal that the small business concern is registered under paragraph (1) as being majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(d) COMPLIANCE.—The head of a Federal agency that makes an award under this section during a fiscal year shall collect and submit to the Administrator data relating to the number and dollar amount of phase I awards, phase II awards, and any other category of awards by the Federal agency under the SBIR program during that fiscal year.

(e) ENFORCEMENT.—If a Federal agency awards more than the percentage of the funds allocated for the SBIR program of the Federal agency authorized under subsection (a) for a purpose described in that subsection, the head of the Federal agency shall transfer an amount equal to the amount awarded in excess of the amount authorized under that subsection to the funds for general SBIR programs from the non-SBIR and non-STTR research and development funds of the Federal agency not later than 180 days after the date on which the Federal agency made the award that caused the total awarded under that subsection to be more than the amount authorized under that subsection for a purpose described in that subsection.

(f) FINAL DECISIONS ON APPLICATIONS UNDER THE SBIR PROGRAM.—

(1) DEFINITION OF COVERED SMALL BUSINESS CONCERN.—In this subsection, the term “covered small business concern” means a small business concern that—

- (A) was not majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms on the date

1 on which the small business concern submitted an application in  
2 response to a solicitation under an SBIR program; and

3 (B) on the date of the award under the SBIR program, is ma-  
4 jority-owned by multiple venture capital operating companies,  
5 hedge funds, or private equity firms.

6 (2) IN GENERAL.—If a Federal agency does not make an award  
7 under a solicitation under an SBIR program before the date that is  
8 9 months after the date on which the period for submitting applications  
9 under the solicitation ends—

10 (A) a covered small business concern is eligible to receive the  
11 award, without regard to whether the covered small business con-  
12 cern meets the requirements for receiving an award under the  
13 SBIR program for a small business concern that is majority-  
14 owned by multiple venture capital operating companies, hedge  
15 funds, or private equity firms, if the covered small business con-  
16 cern meets all other requirements for such an award; and

17 (B) the head of the Federal agency shall transfer an amount  
18 equal to any amount awarded to a covered small business concern  
19 under the solicitation to the funds for general SBIR programs  
20 from the non-SBIR and non-STTR research and development  
21 funds of the Federal agency, not later than 90 days after the date  
22 on which the Federal agency makes the award.

23 (g) EVALUATION CRITERIA.—A Federal agency shall not use investment  
24 of venture capital or investment from hedge funds or private equity firms  
25 as a criterion for the award of contracts under the SBIR program or STTR  
26 program.

27 (h) ASSISTANCE IN DETERMINING AFFILIATION

28 (1) CLEAR EXPLANATION REQUIREMENT.—The Administrator shall  
29 post on the SBA website (with a direct link displayed on the homepage  
30 of the SBA website or the SBIR and STTR websites of the SBA)—

31 (A) a clear explanation of the SBIR and STTR affiliation rules  
32 under part 121 of title 13, Code of Federal Regulations (or any  
33 successor regulation); and

34 (B) contact information for SBA officers or employees who—

35 (i) on request, shall review an issue relating to the rules  
36 described in subparagraph (A); and

37 (ii) shall respond to a request under subparagraph (A) not  
38 later than 20 business days after the date on which the re-  
39 quest is received.

40 (2) INCLUSION OF AFFILIATION RULES FOR CERTAIN SMALL BUSI-  
41 NESS CONCERNS.—On and after the date on which the final regulations

1 under subsection (i) are prescribed, the Administrator shall post on the  
2 SBA website information relating to the regulations, in accordance with  
3 paragraph (1).

4 (i) REGULATIONS.—

5 (1) STATEMENT OF CONGRESSIONAL INTENT.—It is the intent of  
6 Congress that the Administrator should prescribe regulations to carry  
7 out this section that—

8 (A) permit small business concerns that are majority-owned by  
9 multiple venture capital operating companies, hedge funds, or pri-  
10 vate equity firms to participate in the SBIR program in accord-  
11 ance with this section;

12 (B) provide specific guidance for small business concerns that  
13 are majority-owned by multiple venture capital operating compa-  
14 nies, hedge funds, or private equity firms with regard to eligibility,  
15 participation, and affiliation rules; and

16 (C) preserve and maintain the integrity of the SBIR program  
17 as a program for small business concerns in the United States by  
18 prohibiting large businesses or large entities or foreign-owned  
19 businesses or foreign-owned entities from participation in the  
20 SBIR.

21 (2) REGULATIONS.—Not later than December 31, 2012, the Admin-  
22 istrator shall amend sections 121.103 and 121.702 of title 13, Code of  
23 Federal Regulations, to provide for participation in the SBIR program,  
24 solely under authority of this section, by small business concerns that  
25 are majority-owned by multiple venture capital operating companies,  
26 hedge funds, or private equity firms in the SBIR program.

27 (3) CONTENTS.—

28 (A) IN GENERAL.—The regulations shall permit the participa-  
29 tion of an applicants that is majority-owned by multiple venture  
30 capital operating companies, hedge funds, or private equity firms  
31 in the SBIR program in accordance with this section unless the  
32 Administrator determines—

33 (i) in accordance with the size standards established under  
34 subparagraph (B), that the applicant—

35 (I) is a large business or large entity; or

36 (II) is majority-owned or controlled by a large busi-  
37 ness or large entity; or

38 (ii) in accordance with the criteria established under sub-  
39 paragraph (C), that the applicant—



(I) is a foreign-owned business or a foreign entity or is not a citizen of the United States or alien lawfully admitted for permanent residence; or

(II) is majority-owned or controlled by a foreign-owned business, foreign entity, or person who is not a citizen of the United States or alien lawfully admitted for permanent residence.

(B) SIZE STANDARDS.—Under the authority to establish size standards under paragraphs (1) through (4) of section 101103(c) of this title, the Administrator shall, in accordance with paragraph (1) of this subsection, establish size standards for applicants seeking to participate in the SBIR program solely under the authority under this section.

(C) CRITERIA FOR DETERMINING FOREIGN OWNERSHIP.—The Administrator shall establish criteria for determining whether an applicant meets the requirements under subparagraph (A)(ii), and, in establishing the criteria, shall consider whether the criteria should include—

(i) whether the applicant is at least 51 percent owned or controlled by citizens of the United States or domestic venture capital operating companies, hedge funds, or private equity firms;

(ii) whether the applicant is domiciled in the United States; and

(iii) whether the applicant is a direct or indirect subsidiary of a foreign-owned firm, including whether the criteria should include that an applicant is a direct or indirect subsidiary of a foreign-owned entity if—

(I) any venture capital operating company, hedge fund, or private equity firm that owns more than 20 percent of the applicant is a direct or indirect subsidiary of a foreign-owned entity; or

(II) in the aggregate, entities that are direct or indirect subsidiaries of foreign-owned entities own more than 49 percent of the applicant.

(D) CRITERIA FOR DETERMINING AFFILIATION.—The Administrator shall establish criteria, in accordance with paragraph (1), for determining whether an applicant is affiliated with a venture capital operating company, hedge fund, private equity firm, or any other business that the venture capital operating company, hedge

1 fund, or private equity firm has financed and, in establishing the  
2 criteria, shall specify that—

3 (i) if a venture capital operating company, hedge fund, or  
4 private equity firm that is determined to be affiliated with an  
5 applicant is a minority investor in the applicant, the portfolio  
6 companies of the venture capital operating company, hedge  
7 fund, or private equity firm shall not be determined to be af-  
8 filiated with the applicant, unless—

9 (I) the venture capital operating company, hedge fund,  
10 or private equity firm owns a majority of the portfolio  
11 company; or

12 (II) the venture capital operating company, hedge  
13 fund, or private equity firm holds a majority of the seats  
14 on the board of directors of the portfolio company;

15 (ii) subject to clause (i), the Administrator retains the au-  
16 thority to determine whether a venture capital operating com-  
17 pany, hedge fund, or private equity firm is affiliated with an  
18 applicant, including establishing other criteria;

19 (iii) the Administrator shall not determine that a portfolio  
20 company of a venture capital operating company, hedge fund,  
21 or private equity firm is affiliated with an applicant based  
22 solely on 1 or more shared investors; and

23 (iv) subject to clauses (i), (ii), and (iii), the Administrator  
24 retains the authority to determine whether a portfolio com-  
25 pany of a venture capital operating company, hedge fund, or  
26 private equity firm is affiliated with an applicant based on  
27 factors independent of whether there is a shared investor,  
28 such as whether there are contractual obligations between the  
29 portfolio company and the applicant.

30 (4) ENFORCEMENT.—If the Administrator does not prescribe final or  
31 interim final regulations under this subsection on or before December  
32 31, 2012, the Administrator shall not carry out or establish any pilot  
33 program until the date on which the Administrator prescribes the final  
34 or interim final regulations under this subsection.

35 **§ 263110. Assistance for administrative, oversight, and con-**  
36 **tract processing costs**

37 (a) IN GENERAL.—Subject to subsection (c), for fiscal years 2013, 2014,  
38 and 2015, the Administrator shall allow an SBIR agency to use not more  
39 than 3 percent of the funds allocated to the SBIR program of the SBIR  
40 agency for—

1 (1) administering the SBIR program or STTR program of the SBIR  
2 agency;

3 (2) providing outreach and technical assistance relating to the SBIR  
4 program or STTR program of the SBIR agency, including technical as-  
5 sistance site visits, personnel interviews, and national conferences;

6 (3) implementing commercialization and outreach initiatives that  
7 were not in effect on December 31, 2011;

8 (4) carrying out the program under section 263314(a) of this title;

9 (5) carrying out activities relating to oversight and congressional re-  
10 porting, including waste, fraud, and abuse prevention activities;

11 (6) carrying out targeted reviews of recipients of awards under the  
12 SBIR program or STTR program of the SBIR agency that the head  
13 of the SBIR agency determines are at high risk for fraud, waste, or  
14 abuse to ensure compliance with requirements of the SBIR program or  
15 STTR program, respectively;

16 (7) implementing oversight and quality control measures, including  
17 verification of reports and invoices and cost reviews;

18 (8) carrying out section 263109 of this title;

19 (9) paying contract processing costs relating to the SBIR program  
20 or STTR program of the SBIR agency; and

21 (J) providing funding for additional personnel and assistance with  
22 application reviews.

23 (b) OUTREACH AND TECHNICAL ASSISTANCE.—

24 (1) IN GENERAL.—Except as provided in paragraph (2), an SBIR  
25 agency participating in the program under this section shall use a por-  
26 tion of the funds authorized for uses under subsection (a) to carry out  
27 the policy directive required under section 263104(b)(12)(A) of this  
28 title and to increase the participation of States with respect to which  
29 a low level of SBIR awards have historically been awarded.

30 (2) WAIVER.—An SBIR agency may request the Administrator to  
31 waive the requirement under paragraph (1). Such a request shall in-  
32 clude an explanation of why the waiver is necessary. The Administrator  
33 may grant the waiver based on a determination that—

34 (A) the SBIR agency has demonstrated a sufficient need for the  
35 waiver;

36 (B) the outreach objectives of the SBIR agency are being met;  
37 and

38 (C) there is increased participation by States with respect to  
39 which a low level of SBIR awards have historically been awarded.

40 (c) PERFORMANCE CRITERIA.—A Federal agency shall not use funds as  
41 authorized under subsection (a) until after the effective date of performance

1 criteria, which the Administrator shall establish, to measure any benefits of  
2 using funds as authorized under subsection (a) and to assess continuation  
3 of the authority under subsection (a).

4 (d) COORDINATION WITH INSPECTOR GENERAL.—The head of an SBIR  
5 agency shall coordinate the activities funded under paragraph (5), (6), or  
6 (7) of subsection (a) with the Inspector General of the SBIR agency, when  
7 appropriate. An SBIR agency that allocates more than \$50,000,000 to the  
8 SBIR program of the SBIR agency for a fiscal year may share that funding  
9 with its Inspector General when the Inspector General performs those activi-  
10 ties.

11 (e) RULES.—The Administrator shall issue rules to carry out this sub-  
12 section.

13 (f) REPORTING.—The Administrator shall collect data and provide to the  
14 Committee on Small Business and Entrepreneurship of the Senate and the  
15 Committee on Small Business, Committee on Science, Space, and Tech-  
16 nology, and Committee on Appropriations of the House of Representatives  
17 a report on the use of funds under this section, including funds used to  
18 achieve the objectives of subsection (b)(1) and any use of the waiver author-  
19 ity under subsection (b)(2).

20 **§ 263111. Reports by Federal agencies**

21 (a) ANNUAL REPORT.—An SBIR agency shall annually submit to the Ad-  
22 ministrator and the Office of Science and Technology Policy a report on the  
23 Federal agency's SBIR program.

24 (b) REPORTING OF AWARDS MADE FROM SINGLE PROPOSALS, AWARDS  
25 TO MULTIPLE AWARD WINNERS, AND AWARDS TO CRITICAL TECHNOLOGY  
26 TOPICS.—

27 (1) SINGLE PROPOSAL.—If an SBIR agency makes an award with  
28 respect to an SBIR program solicitation topic or subtopic for which the  
29 Federal agency received only 1 proposal, the SBIR agency shall provide  
30 written justification for making the award in its next quarterly report  
31 to the Administrator and in the SBIR agency's next annual report re-  
32 quired under subsection (a).

33 (2) MULTIPLE AWARDS.—An SBIR agency shall include in its next  
34 annual report required under subsection (a) an accounting of the  
35 awards that the SBIR agency has made for phase I of its SBIR pro-  
36 gram during the reporting period to entities that have received more  
37 than 15 awards for phase II of the SBIR program during the preced-  
38 ing 5 fiscal years.

39 (3) CRITICAL TECHNOLOGY AWARDS.—

40 (A) IN GENERAL.—An SBIR agency shall include in its next an-  
41 nual report required under subsection (a) an accounting of the

1 number of awards that the SBIR agency has made to critical tech-  
2 nology topics described in section 263102(3) of this title.

3 (B) CONTENTS.—An accounting under subparagraph (A)  
4 shall—

5 (i) include an identification of the specific critical tech-  
6 nologies topics; and

7 (ii) disclose the percentage by number and dollar amount  
8 of the SBIR agency's total SBIR awards to critical tech-  
9 nology topics.

10 (c) NUMBER AND DOLLAR AMOUNT OF AWARDS.—

11 (1) IN GENERAL.—A Federal agency required by section 263101 of  
12 this title to have an SBIR program or to establish goals shall annually  
13 submit to the Administrator a report that discloses—

14 (A) the number of awards (including awards under section  
15 263314 of this title) pursuant to grants, contracts, or cooperative  
16 agreements over \$10,000 in amount; and

17 (B) the dollar value of all such awards.

18 (2) CONTENTS.—A report under paragraph (1) shall identify SBIR  
19 awards and compare the number and amount of those awards with  
20 awards to other than small business concerns.

21 (3) CALCULATION OF EXTRAMURAL BUDGET.—

22 (A) METHODOLOGY.—Not later than 4 months after the date  
23 of enactment of each appropriations Act for an SBIR agency, the  
24 SBIR agency shall submit to the Administrator a report that in-  
25 cludes a description of the methodology used for calculating the  
26 amount of the extramural budget of that SBIR agency.

27 (B) ADMINISTRATOR'S ANALYSIS.—The Administrator shall in-  
28 clude an analysis of the methodology received from each SBIR  
29 agency in the report required by section 107110(a) of this title.

## 30 **§ 263112. Termination**

31 The authorization to carry out an SBIR program under this chapter ter-  
32 minates on September 30, 2017.

## 33 **Subchapter II—STTR Programs**

### 34 **§ 263201. Required expenditure amounts**

35 (a) STTR PROGRAM BUDGET.—

36 (1) IN GENERAL.—With respect to each fiscal year through fiscal  
37 year 2017, a Federal agency that has an extramural budget for re-  
38 search or research and development in excess of \$1,000,000,000 for the  
39 fiscal year shall expend with small business concerns not less than the  
40 percentage of the extramural budget specified in paragraph (2), specifi-  
41 cally in connection with an STTR program that meets the requirements

1 of this division (including any policy directive under section 263203 of  
2 this title).

3 (2) EXPENDITURE AMOUNTS.—The percentage of the extramural  
4 budget required to be expended by an agency in accordance with para-  
5 graph (1) shall be—

6 (A) 0.35 percent for each of fiscal years 2012 and 2013;

7 (B) 0.40 percent for each of fiscal years 2014 and 2015; and

8 (C) 0.45 percent for fiscal year 2016 and each fiscal year there-  
9 after.

10 (b) LIMITATIONS.—An STTR agency shall not—

11 (1) use any of its STTR program budget established under sub-  
12 section (a) for the purpose of funding—

13 (A) administrative costs of the STTR program, including costs  
14 associated with salaries and expenses; or

15 (B) in the case of a small business concern or a research insti-  
16 tution, costs associated with salaries, expenses, and administrative  
17 overhead (other than direct or indirect costs allowable under  
18 guidelines of the Office of Management and Budget and the Gov-  
19 ernmentwide Federal Acquisition Regulation; or

20 (2) make available for the purpose of meeting the requirements of  
21 subsection (a) an amount of its extramural budget for basic research  
22 that exceeds the percentage specified in subsection (a).

23 (c) EXCLUSION OF CERTAIN FUNDING AGREEMENTS.—A funding agree-  
24 ment with a small business concern for research or research and develop-  
25 ment that results from a competitive or single source selection other than  
26 an STTR program shall not be considered to meet any portion of the per-  
27 centage requirement of subsection (a).

28 **§ 263202. Administration by Federal agencies**

29 An STTR agency shall—

30 (1) unilaterally determine categories of projects to be included in its  
31 STTR program;

32 (2) issue STTR program solicitations in accordance with a schedule  
33 determined cooperatively with the Administrator;

34 (3) unilaterally determine research topics within the Federal agency's  
35 STTR program solicitations, giving special consideration to broad re-  
36 search topics and to topics that further 1 or more critical technologies,  
37 as identified by—

38 (A) the National Critical Technologies Panel in the reports re-  
39 quired under section 603 of the National Science and Technology  
40 Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683)  
41 (as in effect before January 1, 2001); or

1 (B) the Secretary of Defense, in the reports required under sec-  
2 tion 2522 of title 10 (as in effect before February 10, 1996);

3 (4)(A) unilaterally receive and evaluate proposals resulting from  
4 STTR program solicitations; and

5 (B) make a final decision on each proposal submitted under the  
6 STTR program—

7 (i) not later than 1 year after the date on which the applicable  
8 solicitation closes, if with respect to the National Institutes of  
9 Health or the National Science Foundation, or 90 days after the  
10 date on which the applicable solicitation closes, if with respect to  
11 any STTR participating agency; or

12 (ii) if the Administrator authorizes an extension for a solicita-  
13 tion, not later than 90 days after the date that would be applicable  
14 to the STTR participating agency under clause (i);

15 (5)(A) unilaterally select awardees for its STTR program funding  
16 agreements; and

17 (B) inform each awardee under a funding agreement, to the extent  
18 possible, of the expenses of the awardee that will be allowable under  
19 the funding agreement;

20 (6) administer its own STTR program funding agreements (or dele-  
21 gate such administration to another Federal agency);

22 (7)(A) make payments to recipients of STTR program funding  
23 agreements on the basis of progress toward or completion of the fund-  
24 ing agreement requirements; and

25 (B) in all cases, make payment to recipients under funding agree-  
26 ments in full, subject to audit, on or before the last day of the 12-  
27 month period beginning on the date of the completion of the funding  
28 agreement requirements;

29 (8)(A) include as part of its annual performance plan as required by  
30 subsections (a) and (b) of section 1115 of title 31 a section on its  
31 STTR program; and

32 (B) submit that section to the Committee on Small Business of the  
33 Senate and the Committee on Science and the Committee on Small  
34 Business of the House of Representatives;

35 (9) collect annually, and maintain in a common format in accordance  
36 with the simplified reporting requirements under section 263304 of this  
37 title, such information from applicants and awardees as is necessary to  
38 assess STTR program outputs and outcomes, including information  
39 necessary to maintain the database under section 263301 of this title,  
40 including—

41 (A) whether an applicant or awardee—

(i) has venture capital, hedge fund, or private equity firm investment or is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment that the applicant or awardee has received as of the date of the application or award, as applicable; and

(II) the amount of additional capital that the applicant or awardee has invested in the STTR technology;

(ii) has an investor that—

(I) is an individual who is not a citizen of the United States or a lawful permanent resident of the United States and, if so, the name of any such individual; or

(II) is a person that is not an individual and is not organized under the laws of a State or the United States and, if so, the name of any such person;

(iii) is owned by a woman or has a woman as a principal investor;

(iv) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investor;

(v) is a faculty member or a student of an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)); or

(vi) is located in a State in which the total value of contracts awarded to small business concerns under all STTR programs is less than the total value of contracts awarded to small business concerns in a majority of other States, as determined by the Administrator in biennial fiscal years, beginning with fiscal year 2008, based on the most recent statistics compiled by the Administrator;

(B) if an awardee receives an award in an amount that is more than the award guidelines under this division, a statement from the agency that justifies the award amount; and

(C) data with respect to the FAST program;

(10) adopt the agreement developed by the Administrator under section 263204 of this title as the STTR agency's model agreement for allocating between small business concerns and research institutions—

(A) intellectual property rights; and



1 (B) rights, if any, to carry out follow-on research, development,  
2 or commercialization;

3 (11) develop, in consultation with the Office of Federal Procurement  
4 Policy and the Office of Government Ethics, procedures to ensure that  
5 federally funded research and development centers that participate in  
6 STTR program agreements—

7 (A) are free from organizational conflicts of interests relative to  
8 the program;

9 (B) do not use privileged information gained through work per-  
10 formed for an STTR agency or private access to STTR agency  
11 personnel in the development of an STTR program proposal; and

12 (C) use outside peer review, as appropriate;

13 (12) develop procedures for assessing the commercial merit and fea-  
14 sibility of STTR program proposals, as evidenced by—

15 (A) the small business concern's record of successfully commer-  
16 cializing STTR program research or other research;

17 (B) the existence of phase II funding commitments from private  
18 sector or non-STTR program funding sources;

19 (C) the existence of phase III follow-on commitments for the  
20 subject of the research; and

21 (D) the presence of other indicators of the commercial potential  
22 of the idea;

23 (13) implement an outreach program to research institutions and  
24 small business concerns for the purpose of enhancing its STTR pro-  
25 gram, in conjunction with any such outreach done for purposes of the  
26 STTR agency's SBIR program;

27 (14) provide for and fully implement the tenets of Executive Order  
28 13329 (Encouraging Innovation in Manufacturing);

29 (15) provide timely notice to the Administrator of any case or con-  
30 troversy before any Federal judicial or administrative tribunal concern-  
31 ing the STTR program of the Federal agency; and

32 (16) annually submit to the Administrator and the Office of Science  
33 and Technology Policy a report on its STTR program.

34 **§ 263203. Policy directive**

35 (a) ISSUANCE.—The Administrator shall issue a policy directive for the  
36 general conduct of the STTR programs within the Federal Government.

37 (b) CONSULTATION.—The STTR program policy directive shall be issued  
38 after consultation with—

39 (1) the heads of each of the STTR agencies;

40 (2) the Under Secretary of Commerce for Intellectual Property and  
41 Director of the United States Patent and Trademark Office; and

- 1 (3) the Administrator for Federal Procurement Policy.
- 2 (c) CONTENTS.—The policy directive required by subsection (a) shall pro-
- 3 vide for—
- 4 (1) simplified, standardized, and timely STTR program solicitations;
- 5 (2) a simplified, standardized funding process that provides for—
- 6 (A) the timely receipt and review of proposals;
- 7 (B) outside peer review, if appropriate;
- 8 (C) protection of proprietary information provided in proposals;
- 9 (D) selection of awardees;
- 10 (E) retention by a small business concern of the rights to data
- 11 generated by the small business concern in the performance of an
- 12 STTR award for a period of not less than 4 years;
- 13 (F) continued use by a small business concern, as a directed
- 14 bailment, of any property transferred by a Federal agency to the
- 15 small business concern in phase II of the Federal agency's STTR
- 16 program for a period of not less than 2 years, beginning on the
- 17 initial date of the small business concern's participation in phase
- 18 III of the STTR program;
- 19 (G) cost sharing;
- 20 (H) cost principles and payment schedules; and
- 21 (I)(i) 1-year awards for phase I of an STTR program, generally
- 22 not to exceed \$150,000 (which amount the Administrator shall ad-
- 23 just annually for inflation), greater or lesser amounts to be award-
- 24 ed at the discretion of the awarding Federal agency, and shorter
- 25 or longer periods of time to be approved at the discretion of the
- 26 awarding agency where appropriate for a particular project; and
- 27 (ii) 2-year awards for phase II of the STTR program, generally
- 28 not to exceed \$1,000,000 (which amount the Administrator shall
- 29 adjust annually for inflation), greater or lesser amounts to be
- 30 awarded at the discretion of the awarding Federal agency, and
- 31 shorter or longer periods of time to be approved at the discretion
- 32 of the awarding agency where appropriate for a particular project;
- 33 (3) minimizing the regulatory burdens associated with participation
- 34 in an STTR program;
- 35 (4) guidelines for a model agreement, to be used by all Federal agen-
- 36 cies, for allocating between small business concerns and research insti-
- 37 tutions—
- 38 (A) intellectual property rights; and
- 39 (B) rights, if any, to carry out follow-on research, development,
- 40 or commercialization;
- 41 (5) procedures to ensure that—

1 (A) a recipient of an STTR award is a small business concern;  
2 and

3 (B) the small business concern exercises management and con-  
4 trol of the performance of the STTR program funding agreement  
5 under a business plan providing for the commercialization of the  
6 technology that is the subject matter of the award; and

7 (6) procedures to ensure, to the extent practicable, that a Federal  
8 agency that intends to pursue research, development, or production of  
9 a technology developed by a small business concern under an STTR  
10 program enters into a follow-on, non-STTR program funding agree-  
11 ment with the small business concern for the research, development, or  
12 production.

13 (d) RIGHTS TO DATA.—The rights provided for under subsection  
14 (c)(2)(E) shall apply to all Federal funding awards under this division, in-  
15 cluding phase I, phase II, and phase III awards.

16 **§ 263204. Model agreement for intellectual property rights**

17 (a) IN GENERAL.—The Administrator shall promulgate regulations estab-  
18 lishing a single model agreement for use in an STTR program that allocates  
19 between small business concerns and research institutions—

20 (1) intellectual property rights; and

21 (2) rights, if any, to carry out follow-on research, development, or  
22 commercialization.

23 (b) OPPORTUNITY FOR COMMENT.—In promulgating regulations under  
24 subsection (a), the Administrator shall provide to affected Federal agencies,  
25 small business concerns, research institutions, and other interested parties  
26 the opportunity to submit written comments.

27 **§ 263205. Phase 0 proof of concept partnership pilot pro-**  
28 **gram**

29 (a) DEFINITIONS.—In this section:

30 (1) DIRECTOR.—The term “Director” means the Director of the Na-  
31 tional Institutes of Health.

32 (2) INSTITUTION.—The term “institution” means a university or  
33 other research institution that participates in the National Institutes  
34 of Health’s STTR program.

35 (3) PILOT PROGRAM.—The term “pilot program” means the proof of  
36 concept partnership pilot program under subsection (b).

37 (4) QUALIFYING INSTITUTION.—The term “qualifying institution”  
38 means a university or other research institution that participates in the  
39 National Institutes of Health’s STTR program.

40 (b) IN GENERAL.—The Director of the National Institutes of Health may  
41 use \$5,000,000 of the funds allocated under section 263201(a) of this title

1 for a proof of concept partnership pilot program to accelerate the creation  
2 of small businesses and the commercialization of research innovations from  
3 qualifying institutions. To implement the pilot program, the Director shall  
4 award, through a competitive, merit-based process, grants to qualifying in-  
5 stitutions. The grants shall be used only to administer proof of concept  
6 partnership awards in conformity with this section.

7 (c) PROOF OF CONCEPT PARTNERSHIPS.—

8 (1) IN GENERAL.—A proof of concept partnership shall be estab-  
9 lished by a qualifying institution to award grants to individual re-  
10 searchers. The grants should provide researchers with the initial invest-  
11 ment and the resources to support the proof of concept work and com-  
12 mercialization mentoring needed to translate promising research  
13 projects and technologies into a viable company. The work may include  
14 technical validations, market research, clarifying intellectual property  
15 rights position and strategy, and investigating commercial or business  
16 opportunities.

17 (2) AWARD GUIDELINES.—The administrator of a proof of concept  
18 partnership shall award grants in accordance with the following guide-  
19 lines:

20 (A) OVERSIGHT PROCESS.—The proof of concept partnership  
21 shall use a market-focused project management oversight process,  
22 including—

23 (i) a rigorous, diverse review board comprised of local ex-  
24 perts in translational and proof of concept research, including  
25 industry, startup, venture capital, technical, financial, and  
26 business experts and university technology transfer officials;

27 (ii) technology validation milestones focused on market fea-  
28 sibility;

29 (iii) simple reporting effective at redirecting projects; and

30 (iv) the willingness to reallocate funding from failing  
31 projects to projects with more potential.

32 (B) MAXIMUM AMOUNT TOWARD INDIVIDUAL PROPOSAL.—Not  
33 more than \$100,000 shall be awarded toward an individual pro-  
34 posal.

35 (3) EDUCATIONAL RESOURCES AND GUIDANCE.—The administrator  
36 of a proof of concept partnership shall make educational resources and  
37 guidance available to researchers attempting to commercialize their in-  
38 novations.

39 (d) AWARDS BY THE DIRECTOR TO QUALIFYING INSTITUTIONS.—

1 (1) AMOUNT.—The Director may make an award to a qualifying in-  
2 stitution for not more than \$1,000,000 per year for not more than 3  
3 years.

4 (2) CRITERIA.—In determining which qualifying institutions receive  
5 pilot program grants, the Director shall consider, in addition to any  
6 other criteria that the Director determines to be necessary, the extent  
7 to which a qualifying institution—

8 (A) have an established and proven technology transfer or com-  
9 mercialization office and have a plan for engaging the commer-  
10 cialization office in the pilot program's implementation;

11 (B) have demonstrated a commitment to local and regional eco-  
12 nomic development;

13 (C) are located in diverse geographies and are of diverse sizes;

14 (D) are able to assemble project management boards comprised  
15 of industry, startup, venture capital, technical, financial, and busi-  
16 ness experts;

17 (E) have an intellectual property rights strategy or office; and

18 (F) demonstrate a plan for sustainability beyond the duration  
19 of the award.

20 (e) NO BASIC RESEARCH; EVALUATION OF COMMERCIAL POTENTIAL OF  
21 EXISTING DISCOVERIES.—The funds for the pilot program shall not be used  
22 for basic research, but shall be used to evaluate the commercial potential  
23 of existing discoveries, including—

24 (1) proof of concept research or prototype development; and

25 (2) activities that contribute to determining a project's commer-  
26 cialization path, to include technical validations, market research, clari-  
27 fying intellectual property rights, and investigating commercial and  
28 business opportunities.

29 (f) NO ACQUISITION OF RESEARCH EQUIPMENT OR SUPPLIES.—The  
30 funds for the pilot program shall not be used to fund the acquisition of re-  
31 search equipment or supplies unrelated to commercialization activities.

32 (g) EVALUATIVE REPORT.—

33 (1) IN GENERAL.—The Director shall submit to the Committee on  
34 Science, Space, and Technology and Committee on Small Business of  
35 the House of Representatives and the Committee on Small Business  
36 and Entrepreneurship of the Senate an evaluative report regarding the  
37 activities of the pilot program.

38 (2) CONTENTS.—The report shall include—

39 (A) a detailed description of the institutional and proposal selec-  
40 tion process;

41 (B) an accounting of the funds used in the pilot program;

1 (C) a detailed description of the pilot program, including incen-  
2 tives and activities undertaken by review board experts;

3 (D) a detailed compilation of results achieved by the pilot pro-  
4 gram, including the number of small business concerns included,  
5 the number of business packages developed, and the number of  
6 projects that progressed into subsequent STTR phases; and

7 (E) an analysis of the pilot program's effectiveness with sup-  
8 porting data.

9 (h) TERMINATION.—The pilot program shall terminate at the end of fis-  
10 cal year 2017.

11 **Subchapter III—Provisions Relating to**  
12 **Both SBIR Programs and STTR Programs**  
13 **§ 263301. Database**

14 (a) PUBLIC DATABASE.—The Administrator shall develop, maintain, and  
15 make available to the public a searchable, up-to-date, electronic database  
16 that includes—

17 (1) the name, size, location, and an identifying number assigned by  
18 the Administrator of each small business concern that has received a  
19 phase I or phase II SBIR program or STTR award from a Federal  
20 agency;

21 (2) a description of each phase I or phase II SBIR program or  
22 STTR award received by that small business concern, including—

23 (A) an abstract of the project funded by the award, excluding  
24 any information identified by the small business concern as propri-  
25 etary information;

26 (B) the Federal agency making the award; and

27 (C) the date and amount of the award;

28 (3) an identification of any business concern or subsidiary estab-  
29 lished for the commercial application of a product or service for which  
30 an SBIR program or STTR award is made;

31 (4) information regarding mentors and mentoring networks, as re-  
32 quired by section 263305(f)(3) of this title;

33 (5) with respect to assistance under STTR program—

34 (A) whether the small business concern or the research institu-  
35 tion initiated their collaboration on each assisted STTR project;

36 (B) whether the small business concern or the research institu-  
37 tion originated any technology relating to the assisted STTR  
38 project;

39 (C) the length of time it took to negotiate any licensing agree-  
40 ment between the small business concern and the research institu-  
41 tion under each assisted STTR project; and

1 (D) how the proceeds from commercialization, marketing, or  
2 sale of technology resulting from each assisted STTR project were  
3 allocated (by percentage) between the small business concern and  
4 the research institution; and

5 (6) for each small business concern that receives a phase I or phase  
6 II SBIR award or STTR award from a Federal agency, whether the  
7 small business concern—

8 (A) has venture capital, hedge fund, or private equity firm in-  
9 vestment and, if so, whether the small business concern is reg-  
10 istered as majority-owned by multiple venture capital operating  
11 companies, hedge funds, or private equity firms as required under  
12 section 263109(c) of this title;

13 (B) is owned by a woman or has a woman as a principal inves-  
14 tor;

15 (C) is owned by a socially or economically disadvantaged indi-  
16 vidual or has a socially or economically disadvantaged individual  
17 as a principal investor;

18 (D) is owned by a faculty member or a student of an institution  
19 of higher education (as defined in section 101 of the Higher Edu-  
20 cation Act of 1965 (20 U.S.C. 1001); or

21 (v) received assistance under the FAST Program.

22 (b) GOVERNMENT DATABASE.—

23 (1) IN GENERAL.—The Administrator, in consultation with SBIR  
24 agencies and STTR agencies, shall develop and maintain a database  
25 that—

26 (A) contains for each small business concern that applies for,  
27 submits a proposal for, or receives an award under phase I or  
28 phase II of the SBIR program or STTR program—

29 (i) the name, size, and location of, and the identifying  
30 number assigned by the Administrator to, the small business  
31 concern;

32 (ii) an abstract of the applicable project;

33 (iii) the specific aims of the project;

34 (iv) the number of employees of the small business concern;

35 (v) the names and titles of the key individuals that will  
36 carry out the project, the position each key individual holds  
37 in the small business concern, and contact information for  
38 each key individual;

39 (vi) the percentage of effort that each individual described  
40 in clause (v) will contribute to the project;

(vii) whether the small business concern is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms; and

(viii) the Federal agency to which the application is made and contact information for the person or office within the Federal agency that is responsible for reviewing applications and making awards under the SBIR program or STTR program;

(B) contains for each phase II award made by a Federal agency—

(i) information collected in accordance with subsection (c) on revenue from the sale of new products or services resulting from the research conducted under the award;

(ii) information collected in accordance with subsection (c) on additional investment from any source, other than phase I or phase II SBIR program or STTR awards, to further the research and development conducted under the award; and

(iii) any other information received in connection with the award that the Administrator, in conjunction with the SBIR program and STTR program managers of Federal agencies, considers relevant and appropriate;

(C) includes any narrative information that a small business concern receiving a phase II award voluntarily submits to further describe the outputs and outcomes of its awards;

(D) includes, for each awardee—

(i) the name, size, and location of, and any identifying number assigned by the Administrator to, the awardee;

(ii) whether the awardee has venture capital, hedge fund, or private equity firm investment and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment as of the date of the award;

(II) the percentage of ownership of the awardee held by a venture capital operating company, hedge fund, or private equity firm, including whether the awardee is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms; and

(III) the amount of additional capital that the awardee has invested in the SBIR or STTR technology, which information shall be collected on an annual basis;

(iii) the names and locations of any affiliates of the awardee;



1 (iv) the number of employees of the awardee;  
2 (v) the number of employees of the affiliates of the award-  
3 ee; and

4 (vi) the names of, and the percentage of ownership of the  
5 awardee held by—

6 (I) any individual who is not a citizen of the United  
7 States or a lawful permanent resident of the United  
8 States; or

9 (II) any person that is not an individual and is not or-  
10 ganized under the laws of a State or the United States;

11 (E) includes any other data collected by or available to any Fed-  
12 eral agency that the Federal agency considers may be useful for  
13 SBIR program or STTR program evaluation; and

14 (F) includes a timely and accurate list of any individual or small  
15 business concern that has participated in the SBIR program or  
16 STTR program that has been—

17 (i) convicted of a fraud-related crime involving funding re-  
18 ceived under the SBIR program or STTR program; or

19 (ii) found civilly liable for a fraud-related violation involv-  
20 ing funding received under the SBIR program or STTR pro-  
21 gram.

22 (2) USE.—The database under paragraph (1) shall be available for  
23 use solely—

24 (A) for program evaluation purposes by the Federal Govern-  
25 ment; or

26 (B) in accordance with policy directives issued by the Adminis-  
27 trator, by other authorized persons that are subject to a use and  
28 nondisclosure agreement with the Federal Government covering  
29 the use of the database.

30 (c) UPDATING OF INFORMATION.—

31 (1) IN GENERAL.—A small business concern applying for a phase II  
32 award under this division shall be required to update information in  
33 the database established under this section for any prior phase II  
34 award received by that small business concern.

35 (2) APPORTIONMENT.—In complying with this subsection, a small  
36 business concern may apportion sales or additional investment informa-  
37 tion relating to more than 1 phase II award among those awards, if  
38 the small business concern notes the apportionment for each award.

39 (3) UPDATES AT TERMINATION.—

40 (A) IN GENERAL.—A small business concern receiving a phase  
41 II award under this division shall update information in the data-

1 base concerning that award at the termination of the award pe-  
2 riod.

3 (B) VOLUNTARY UPDATES.—An SBIR agency shall request a  
4 small business concern described in subparagraph (A) to volun-  
5 tarily update such information described in subparagraph (A) an-  
6 nually after termination for a period of 5 years.

7 (4) GOVERNMENT DATABASE.—Not later than 60 days after the date  
8 established by a Federal agency for submitting applications or propos-  
9 als for a phase I or phase II award under the SBIR program or STTR  
10 program, the head of the Federal agency shall submit to the Adminis-  
11 trator the data required under subsection (b) with respect to each small  
12 business concern that applies or submits a proposal for the phase I or  
13 phase II award.

14 (d) PROTECTION OF INFORMATION.—Information provided under sub-  
15 section (b) or (c) shall be considered privileged and confidential and not  
16 subject to disclosure under section 552 of title 5.

17 (e) EFFECT OF INCLUSION OF INFORMATION IN DATABASE.—Inclusion  
18 of information in the database under this section shall not be considered  
19 to be publication for purposes of subsection (a) or (b) of section 102 of title  
20 35.

21 **§ 263302. Phase III agreements**

22 (a) IN GENERAL.—In the case of a small business concern that is award-  
23 ed a funding agreement for phase II of an SBIR program or STTR pro-  
24 gram, a Federal agency may enter into a phase III agreement with the  
25 small business concern for additional work to be performed during or after  
26 phase II period.

27 (b) PROCEDURES.—The phase II funding agreement with the small busi-  
28 ness concern may, at the discretion of the Federal agency awarding the  
29 agreement, set out the procedures applicable to phase III agreements with  
30 that Federal agency or any other Federal agency.

31 (c) INTELLECTUAL PROPERTY RIGHTS.—A funding agreement under an  
32 SBIR program or STTR program shall include provisions setting forth the  
33 respective rights of the United States and the small business concern with  
34 respect to—

35 (1) intellectual property rights; and

36 (2) any right to carry out follow-on research.

37 (d) PHASE III AWARDS.—To the greatest extent practicable, a Federal  
38 agency or Federal prime contractor shall issue a phase III award relating  
39 to technology, including a sole source award, to the SBIR award recipient  
40 or STTR award recipient that developed the technology.

1   **§ 263303. Inclusion of SBIR program and STTR program in-**  
2                   **formation in strategic plans**

3       Program information relating to SBIR programs and STTR programs  
4       shall be included by a Federal agency in any update or revision required  
5       of the Federal agency under section 306(b) of title 5.

6   **§ 263304. Reduction of paperwork and compliance burden**

7       (a) IN GENERAL.—

8           (1) STANDARDIZATION OF REPORTING REQUIREMENTS.—The Ad-  
9       ministrator shall work with SBIR agencies and STTR agencies to  
10      standardize reporting requirements for the collection of data from  
11      SBIR program or STTR program applicants and awardees, including  
12      data for inclusion in the database under section 263301 of this title,  
13      taking into consideration the unique needs of each Federal agency, and  
14      to the extent possible, permitting the updating of previously reported  
15      information by electronic means.

16          (2) MINIMIZATION OF BURDEN.—The reporting requirements de-  
17      scribed in paragraph (1) shall be designed to minimize the burden on  
18      small business concerns.

19      (b) SIMPLIFICATION OF APPLICATION AND AWARD PROCESS.—Not later  
20      than 1 year after December 31, 2011, and after a period of public comment,  
21      the Administrator shall issue regulations or guidelines, taking into consider-  
22      ation the unique needs of each Federal agency, to ensure that each SBIR  
23      agency and STTR agency simplifies and standardizes the program proposal,  
24      selection, contracting, compliance, and audit procedures for the SBIR pro-  
25      gram or STTR program of the SBIR agency or STTR agency (including  
26      procedures relating to overhead rates for applicants and documentation re-  
27      quirements) to reduce the paperwork and regulatory compliance burden on  
28      small business concerns applying to and participating in the SBIR program  
29      or STTR program.

30   **§ 263305. FAST program**

31      (a) DEFINITIONS.—In this section:

32          (1) APPLICANT.—The term “applicant” means an entity, organiza-  
33      tion, or individual that submits a proposal for an award or a coopera-  
34      tive agreement under this section.

35          (2) BUSINESS ADVICE AND COUNSELING.—The term “business ad-  
36      vice and counseling” means advice and assistance on matters described  
37      in subsection (f) to small business concerns to guide small business  
38      concerns through the SBIR program and STTR program process, from  
39      application to award and successful completion of each phase of an  
40      SBIR program or STTR program.

1           (3) MENTOR.—The term “mentor” means an individual described in  
2 subsection (f).

3           (4) MENTORING NETWORK.—The term “mentoring network” means  
4 an association, organization, coalition, or other entity (including an in-  
5 dividual) that meets the requirements of subsection (f).

6           (5) RECIPIENT.—The term “recipient” means a person that receives  
7 an award or becomes party to a cooperative agreement under this sec-  
8 tion.

9           (6) STATE.—The term “State” means a State, the District of Co-  
10 lumbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

11       (b) ESTABLISHMENT OF FAST PROGRAM.—The Administrator shall es-  
12 tablish a program to be known as the Federal and State Technology Part-  
13 nership program or FAST program, the purpose of which shall be to  
14 strengthen the technological competitiveness of small business concerns in  
15 the States.

16       (c) GRANTS AND COOPERATIVE AGREEMENTS.—

17           (1) JOINT REVIEW.—In carrying out the FAST program under this  
18 section, the Administrator and the SBIR program managers at the Na-  
19 tional Science Foundation and the Department of Defense shall jointly  
20 review proposals submitted by applicants and may make awards or  
21 enter into cooperative agreements under this section based on the fac-  
22 tors for consideration specified in paragraph (2), to enhance or develop  
23 in a State—

24               (A) technology research and development by small business con-  
25 cerns;

26               (B) technology transfer from university research to technology-  
27 based small business concerns;

28               (C) technology deployment and diffusion benefiting small busi-  
29 ness concerns;

30               (D) the technological capabilities of small business concerns  
31 through the establishment or operation of consortia comprised of  
32 entities, organizations, or individuals, including—

33                   (i) State and local development agencies and entities;

34                   (ii) representatives of technology-based small business con-  
35 cerns;

36                   (iii) industries and emerging companies;

37                   (iv) universities; and

38                   (v) small business development centers; and

39               (E) outreach, financial support, and technical assistance to  
40 technology-based small business concerns participating in or inter-  
41 ested in participating in an SBIR program, including initiatives—

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1 (i) to make grants or loans to companies to pay a portion  
2 or all of the cost of developing SBIR program proposals;

3 (ii) to establish or operate a mentoring network within the  
4 FAST program to provide business advice and counseling  
5 that will assist small business concerns that have been identi-  
6 fied by FAST program participants, program managers of  
7 participating SBIR agencies, the Administrator, or other enti-  
8 ties that—

9 (I) are knowledgeable about the SBIR programs and  
10 STTR programs as good candidates for SBIR programs  
11 and STTR programs; and

12 (II) would benefit from mentoring, in accordance with  
13 subsection (f);

14 (iii) to create or participate in a training program for indi-  
15 viduals providing SBIR program outreach and assistance at  
16 the State and local levels; and

17 (iv) to encourage the commercialization of technology devel-  
18 oped through SBIR program funding.

19 (2) SELECTION CONSIDERATIONS.—In making awards or entering  
20 into cooperative agreements under this section, the Administrator and  
21 the SBIR program managers at the National Science Foundation and  
22 the Department of Defense—

23 (A) may consider only proposals by applicants that intend to  
24 use a portion of the Federal assistance provided under this section  
25 to provide outreach, financial support, or technical assistance to  
26 technology-based small business concerns participating in or inter-  
27 ested in participating in an SBIR program; and

28 (B) shall consider, at a minimum—

29 (i) whether the applicant has demonstrated that the assist-  
30 ance to be provided would address unmet needs of small busi-  
31 ness concerns in the community, and whether it is important  
32 to use Federal funding for the proposed activities;

33 (ii) whether the applicant has demonstrated that a need ex-  
34 ists to increase the number or success of small high-tech-  
35 nology businesses in the State, as measured by the number  
36 of phase I and phase II SBIR awards that have historically  
37 been received by small business concerns in the State;

38 (iii) whether the projected costs of the proposed activities  
39 are reasonable;

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1 (iv) whether the proposal integrates and coordinates the  
2 proposed activities with other State and local programs assist-  
3 ing small high-technology firms in the State;

4 (v) the manner in which the applicant will measure the re-  
5 sults of the activities to be conducted; and

6 (vi) whether the proposal addresses the needs of—

7 (I) small business concerns owned and controlled by  
8 women;

9 (II) small business concerns owned and controlled by  
10 minorities; and

11 (III) small business concerns located in areas that  
12 have historically not participated in the SBIR programs  
13 and STTR programs.

14 (3) PROPOSAL LIMIT.—Not more than 1 proposal may be submitted  
15 for inclusion in the FAST program under this section to provide serv-  
16 ices in any 1 State in any 1 fiscal year.

17 (4) PROCESS.—

18 (A) PROPOSALS AND APPLICATION.—A proposal or application  
19 for assistance under this section shall be in such form and subject  
20 to such procedures as the Administrator shall establish.

21 (B) REGULATIONS.—The Administrator shall promulgate regu-  
22 lations establishing standards for the consideration of proposals  
23 under paragraph (2), including standards regarding each of the  
24 considerations described in paragraph (2)(B).

25 (d) COOPERATION AND COORDINATION.—In carrying out the FAST pro-  
26 gram, the Administrator shall cooperate and coordinate with—

27 (1) SBIR agencies; and

28 (2) entities, organizations, and individuals actively engaged in en-  
29 hancing or developing the technological capabilities of small business  
30 concerns, including—

31 (A) State and local development agencies and entities;

32 (B) State committees established under the Experimental Pro-  
33 gram to Stimulate Competitive Research of the National Science  
34 Foundation established under section 113 of the National Science  
35 Foundation Act of 1988 (42 U.S.C. 1862g);

36 (C) State science and technology councils; and

37 (D) representatives of technology-based small business concerns.

38 (e) REQUIREMENTS.—

39 (1) COMPETITIVE BASIS.—An award under this section shall be  
40 made or a cooperative agreement under this section shall be entered  
41 into on a competitive basis.

(2) MATCHING REQUIREMENTS.—

(A) AMOUNT OF NON-FEDERAL SHARE.—

(i) IN GENERAL.—The non-Federal share of the cost of an activity (other than a planning activity) carried out using an award or under a cooperative agreement under this section shall be—

(I)  $\frac{1}{3}$ , in the case of a recipient that will serve small business concerns located in 1 of the 18 States receiving the fewest SBIR program phase I awards;

(II) except as provided in subparagraph (B),  $\frac{1}{2}$ , in the case of a recipient that will serve small business concerns located in 1 of the 16 States receiving the greatest number of SBIR program phase I awards; and

(III) except as provided in subparagraph (B),  $\frac{3}{7}$ , in the case of a recipient that will serve small business concerns located in a State not described in subclause (I) or (II) that is receiving SBIR program phase I awards.

(ii) RANKINGS.—For purposes of clause (i), the Administrator shall reevaluate the ranking of a State once every 2 fiscal years, based on the most recent statistics compiled by the Administrator.

(B) LOW-INCOME AREAS.—To the extent that the Federal contribution to the cost of the activity will be directly allocated by a recipient described in subparagraph (A) to serve small business concerns located in a qualified census tract, the non-Federal share of the cost of an activity carried out using an award or under a cooperative agreement under this section shall be  $\frac{1}{3}$ .

(C) TYPES OF FUNDING.—

(i) IN GENERAL.—The non-Federal share of the cost of an activity carried out by a recipient shall be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions.

(ii) NON-FEDERAL SOURCE.—None of the non-Federal share of costs or contributions may be derived from funds from any other Federal program.

(3) DURATION.—An award may be made or a cooperative agreement may be entered into under this section for multiple years, not to exceed 5 years in total.

(f) MENTORING NETWORKS.—

(1) IN GENERAL.—A recipient of an award or participant in a cooperative agreement under this section may use a reasonable amount of

1 the assistance for the establishment of a mentoring network under this  
2 section.

3 (2) CRITERIA.—A mentoring network established using assistance  
4 under this section shall—

5 (A) provide business advice and counseling to high technology  
6 small business concerns located in the State or region served by  
7 the mentoring network and identified under subsection  
8 (c)(1)(E)(ii) as potential candidates for an SBIR program or  
9 STTR program;

10 (B) identify volunteer mentors who—

11 (i) are persons associated with a small business concern  
12 that has successfully completed 1 or more SBIR program or  
13 STTR program funding agreements; and

14 (ii) have agreed to guide small business concerns through  
15 all stages of the SBIR program or STTR program process,  
16 including providing assistance relating to—

17 (I) proposal writing;

18 (II) marketing;

19 (III) Government accounting;

20 (IV) Government audits;

21 (V) project facilities and equipment;

22 (VI) human resources;

23 (VII) phase III partners;

24 (VIII) commercialization;

25 (IX) venture capital networking; and

26 (X) other matters relevant to the SBIR programs and  
27 STTR programs;

28 (C) have experience working with small business concerns par-  
29 ticipating in the SBIR programs and STTR programs;

30 (D) contribute information to the national database referred to  
31 in paragraph (3); and

32 (E) agree to reimburse volunteer mentors for out-of-pocket ex-  
33 penses related to service as a mentor under this section.

34 (3) MENTORING DATABASE.—The Administrator, directly or by con-  
35 tract, shall—

36 (A) include in the database required by section 263301 of this  
37 title, in cooperation with the SBIR program, STTR program, and  
38 FAST program, information on mentoring networks and mentors  
39 participating under this subsection, including a description of their  
40 areas of expertise;



1 (B) work cooperatively with mentoring networks to maintain  
2 and update the database; and

3 (C) take such action as is necessary to aggressively promote  
4 mentoring networks under this subsection.

5 (g) TERMINATION.—The authority to carry out the FAST program under  
6 this section terminates on September 30, 2005.

7 **§ 263306. Innovation in energy efficiency**

8 (a) FEDERAL AGENCY ENERGY-RELATED PRIORITY.—In carrying out its  
9 duties under this division relating to SBIR program and STTR program so-  
10 licitations by Federal agencies, the Administrator shall—

11 (1) ensure that Federal agencies give high priority to small business  
12 concerns that participate in or conduct energy efficiency or renewable  
13 energy system research and development projects; and

14 (2) include in the annual report to Congress under section  
15 107110(a) of this title a determination of whether the priority de-  
16 scribed in paragraph (1) is being carried out.

17 (b) CONSULTATION.—The Administrator shall consult with the heads of  
18 other Federal agencies in determining whether priority has been given to  
19 small business concerns that participate in or conduct energy efficiency or  
20 renewable energy system research and development projects, as required by  
21 this section.

22 (c) GUIDELINES.—The Administrator shall issue guidelines and directives  
23 to assist Federal agencies in meeting the requirements of this section.

24 **§ 263307. Competitive selection procedures**

25 All funds awarded, appropriated, or otherwise made available in accord-  
26 ance with section 263101 or 263201 of this title shall be awarded pursuant  
27 to competitive and merit-based selection procedures.

28 **§ 263308. Award amounts in excess of guidelines**

29 (a) PROHIBITION.—

30 (1) IN GENERAL.—A Federal agency shall not issue an award under  
31 the SBIR program or STTR program if the amount of the award  
32 would exceed the award guidelines established under this section by  
33 more than 50 percent.

34 (2) WAIVER FOR SPECIFIC TOPIC.—On the receipt of an application  
35 from an SBIR agency or STTR agency, the Administrator may grant  
36 a waiver from the prohibition under paragraph (1) with respect to a  
37 specific topic (but not for the SBIR agency or STTR agency as a  
38 whole) for a fiscal year if the Administrator determines, based on the  
39 information contained in the application from the SBIR agency or  
40 STTR agency, that—

1 (A) the requirement under paragraph (1) will interfere with the  
2 ability of the SBIR agency or STTR agency to fulfill its research  
3 mission through the SBIR program or STTR program; and

4 (B) the SBIR agency or STTR agency will minimize, to the  
5 maximum extent possible, the number of awards that do not sat-  
6 isfy the prohibition under paragraph (1) to preserve the nature  
7 and intent of the SBIR program and the STTR program.

8 (b) MAINTENANCE OF INFORMATION.—An SBIR agency and an STTR  
9 agency shall maintain information on awards exceeding the guidelines estab-  
10 lished under this division, including, for each such award—

- 11 (1) the amount of the award;  
12 (2) a justification for exceeding the guidelines for the award;  
13 (3) the identity and location of the award recipient; and  
14 (4) whether the award recipient has received any venture capital,  
15 hedge fund, or private equity firm investment and, if so, whether the  
16 recipient is majority-owned by multiple venture capital operating com-  
17 panies, hedge funds, or private equity firms.

18 (c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed  
19 to preclude an SBIR agency or STTR agency from supplementing an award  
20 under the SBIR program or STTR program using funds of the SBIR agen-  
21 cy or STTR agency that are not part of the SBIR program or STTR pro-  
22 gram of the SBIR agency or STTR agency.

23 **§ 263309. Subsequent phase II awards**

24 (a) AGENCY FLEXIBILITY.—A small business concern that receives a  
25 phase I award from a Federal agency under this division shall be eligible  
26 to receive a subsequent phase II award from another Federal agency if—

- 27 (1) the head of each relevant Federal agency or the relevant compo-  
28 nent of the Federal agency makes a written determination that the top-  
29 ics of the relevant awards are the same; and  
30 (2) both Federal agencies report the awards to the Administrator for  
31 inclusion in the public database under section 263301 of this title.

32 (b) SBIR AND STTR PROGRAM FLEXIBILITY.—

33 (1) IN GENERAL.—A small business concern that receives a phase I  
34 award under this division under the SBIR program or STTR program  
35 may receive a subsequent phase II award under either the SBIR pro-  
36 gram or the STTR program.

37 (2) REPORTING.—The participating Federal agency or agencies shall  
38 report awards referred to in paragraph (1) to the Administrator for in-  
39 clusion in the public database under section 263101 of this title.

40 (c) PREVENTION OF DUPLICATIVE AWARDS.—The head of a Federal  
41 agency shall verify that any activity to be performed with respect to a

1 project with a phase I or phase II SBIR or STTR award has not been fund-  
2 ed under the SBIR program or STTR program of another Federal agency.

3 **§ 263310. Collaboration with Federal laboratories and re-**  
4 **search and development centers**

5 (a) AUTHORIZATION.—Subject to the limitations under this section, the  
6 head of an SBIR participating agency or STTR participating agency may  
7 make an SBIR award or STTR award to any eligible small business concern  
8 that—

9 (1) intends to enter into an agreement with a Federal laboratory or  
10 federally funded research and development center for a portion of the  
11 activities to be performed under the award; or

12 (2) enters into a cooperative research and development agreement  
13 (as defined in section 12(d) of the Stevenson-Wydler Technology Inno-  
14 vation Act of 1980 (15 U.S.S. 3710a(d)) with a Federal laboratory.

15 (b) PROHIBITION.—A Federal agency shall not—

16 (1) condition an SBIR award or STTR award on a small business  
17 concern's entering into an agreement with any Federal laboratory or  
18 any federally funded laboratory or research and development center for  
19 any portion of the activities to be performed under the award;

20 (B) approve an agreement between a small business concern receiv-  
21 ing an SBIR award or STTR award and a Federal laboratory or feder-  
22 ally funded laboratory or research and development center, if the small  
23 business concern performs a lesser portion of the activities to be per-  
24 formed under the award than required by this section and by the SBIR  
25 policy directives and the STTR policy directive of the Administrator;  
26 or

27 (3) approve an agreement that violates any provision, including any  
28 data rights protections provision, of this section or the SBIR Directives  
29 and the STTR policy directive.

30 (c) IMPLEMENTATION.—Not later than December 31, 2012, the Adminis-  
31 trator shall modify the SBIR policy directive s and the STTR policy direc-  
32 tive issued under this division to ensure that small business concerns—

33 (1) have the flexibility to use the resources of the Federal labora-  
34 tories or federally funded research and development centers; and

35 (2) are not required to enter into agreement with any Federal lab-  
36 oratory or any federally funded laboratory or research and development  
37 center as a condition of an award.

38 (d) ADVANCE PAYMENT.—If a small business concern that receives an  
39 award under this division enters into an agreement with a Federal labora-  
40 tory or federally funded research and development center for a portion of  
41 the activities to be performed under the award, the Federal laboratory or

1 federally funded research and development center shall not require advance  
2 payment from the small business concern in an amount greater than the  
3 amount necessary to pay for 30 days of the activities.

4 **§ 263311. Sequential SBIR awards and STTR awards for con-**  
5 **tinued work on a project**

6 A small business concern that receives a phase II SBIR award or phase  
7 II STTR award for a project remains eligible to receive 1 additional phase  
8 II SBIR award or phase II STTR award for continued work on the project.

9 **§ 263312. Prevention of duplicative awards**

10 The head of a Federal agency shall verify that any activity to be per-  
11 formed with respect to a project with a phase I or phase II SBIR award  
12 or STTR award has not been funded under the SBIR program or STTR  
13 program of another Federal agency.

14 **§ 263313. Discretionary technical assistance**

15 (a) IN GENERAL.—An SBIR agency or STTR agency may enter into an  
16 agreement with a vendor selected under subsection (b) to provide small busi-  
17 ness concerns engaged in SBIR projects or STTR projects with technical  
18 assistance services, such as access to a network of scientists and engineers  
19 engaged in a wide range of technologies or access to technical and business  
20 literature available through on-line data bases, for the purpose of assisting  
21 the small business concerns in—

22 (1) making better technical decisions concerning the projects;

23 (2) solving technical problems that arise during the conduct of the  
24 projects;

25 (3) minimizing technical risks associated with the projects; and

26 (4) developing and commercializing new commercial products and  
27 processes resulting from the projects.

28 (b) VENDOR SELECTION.—

29 (1) IN GENERAL.—An SBIR agency or STTR agency may select a  
30 vendor to assist small business concerns in meeting the goals listed in  
31 subsection (a) for a term not to exceed 5 years.

32 (2) COMPETITION.—Selection of a vendor shall be competitive and  
33 shall use merit-based criteria.

34 (c) ADDITIONAL TECHNICAL ASSISTANCE.—

35 (1) IN GENERAL.—An SBIR agency or STTR agency may—

36 (A) provide to a phase I or phase II SBIR award or STTR  
37 award recipient, through a vendor selected under subsection (b),  
38 the services described in subsection (a) in an amount equal to not  
39 more than \$5,000 per year; or

40 (B) authorize a phase I or phase II SBIR award or STTR  
41 award recipient to purchase the services described in subsection

1 (a) in an amount equal to not more than \$5,000 per year, which  
2 shall be in addition to the amount of the recipient's award.

3 (2) FLEXIBILITY.—In carrying out paragraph (1)), an SBIR agency  
4 or STTR agency shall provide the allowable amounts to a recipient that  
5 meets the eligibility requirements under the paragraph if the recipient  
6 requests to seek technical assistance from an individual or entity other  
7 than the vendor selected under paragraph (2) by the SBIR agency or  
8 STTR agency.

9 (3) LIMITATION.—An SBIR agency or STTR agency shall not—

10 (A) use the amounts authorized under paragraph (1) unless the  
11 vendor selected under subsection (b) provides the technical assist-  
12 ance to the recipient; or

13 (B) enter a contract with a vendor under subsection (b) under  
14 which the amount provided for technical assistance is based on the  
15 total number of phase I or phase II awards.

16 **§ 263314. Commercialization readiness programs**

17 (a) DEPARTMENT OF DEFENSE AND MILITARY DEPARTMENTS.—

18 (1) IN GENERAL.—The Secretary of Defense or Secretary of a mili-  
19 tary department may create and administer a commercialization readi-  
20 ness program to accelerate the transition of technologies, products, and  
21 services developed under the SBIR program or STTR program of the  
22 Department of Defense or of the military department to phase III, in-  
23 cluding the acquisition process.

24 (2) IDENTIFICATION OF RESEARCH PROGRAMS FOR ACCELERATED  
25 TRANSITION TO ACQUISITION PROCESS.—In carrying out a commer-  
26 cialization readiness program, the Secretary of Defense or Secretary of  
27 a military department shall identify research programs of an SBIR  
28 program or STTR program that have the potential for rapid  
29 transitioning to phase III and into the acquisition process.

30 (3) LIMITATION.—A research program of a military department shall  
31 not be identified under paragraph (1) unless the Secretary of the mili-  
32 tary department certifies in writing that the successful transition of the  
33 research program to phase III and into the acquisition process is ex-  
34 pected to meet high priority military requirements of the military de-  
35 partment.

36 (4) FUNDING.—

37 (A) IN GENERAL.—On and after December 31, 2015, the Sec-  
38 retary of Defense or the Secretary of a military department may  
39 use not more than an amount equal to 1 percent of the funds  
40 available to the Department of Defense or the military department

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1           for payment of expenses incurred to administer the commercializa-  
2           tion readiness program under this subsection.

3           (B) USE OF FUNDS.—Funds described in subparagraph (A)—

4                 (i) shall not be subject to the limitations on the use of  
5                 funds in section 263101(b) of this title; and

6                 (ii) shall not be used to make phase III awards.

7           (5) INSERTION INCENTIVES.—For any contract with a value of not  
8           less than \$100,000,000, the Secretary of Defense may—

9                 (A) establish goals for the transition of phase III technologies  
10                 in subcontracting plans; and

11                 (B) require a prime contractor on the contract to report the  
12                 number and dollar amount of contracts entered into by that prime  
13                 contractor for phase III SBIR projects or STTR projects.

14           (6) GOAL FOR SBIR AND STTR TECHNOLOGY INSERTION.—The Sec-  
15           retary of Defense shall—

16                 (A) set a goal to increase the number of phase II SBIR con-  
17                 tracts and the number of phase II STTR contracts awarded by  
18                 the Secretary that lead to technology transition into programs of  
19                 record or fielded systems;

20                 (B) use incentives in effect on December 31, 2011, or create  
21                 new incentives, to encourage agency program managers and prime  
22                 contractors to meet the goal under subparagraph (A); and

23                 (C) submit to the Administrator—

24                         (i) the number and percentage of Phase II SBIR and  
25                         STTR contracts awarded by the Secretary that led to tech-  
26                         nology transition into programs of record or fielded systems;

27                         (ii) information on the status of each project that received  
28                         funding through the commercialization readiness program  
29                         and efforts to transition those projects into programs of  
30                         record or fielded systems; and

31                         (iii) a description of each incentive that has been used by  
32                         the Secretary under subparagraph (B) and the effectiveness  
33                         of that incentive with respect to meeting the goal under sub-  
34                         paragraph (A).

35           (7) EFFECT OF SUBSECTION.—The authority to create and admin-  
36           ister a commercialization readiness program under this subsection shall  
37           not be construed to eliminate or replace any other part of the SBIR  
38           program or STTR program that enhances the insertion or transition  
39           of SBIR or STTR technologies.

40           (b) FEDERAL AGENCIES OTHER THAN THE DEPARTMENT OF DE-  
41           FENSE.—

(1) IN GENERAL.—On approval of an application under paragraph (2), the head of an SBIR participating agency or STTR participating agency other than the Department of Defense may establish a pilot program under which the agency head may allocate not more than 10 percent of the funds allocated to the SBIR program or STTR program of the SBIR participating agency or STTR participating agency—

(A) for awards for technology development, testing, evaluation, and commercialization assistance for SBIR or STTR phase II technologies; or

(B) to support the progress of research, research and development, and commercialization conducted under the SBIR program or STTR program to phase III.

(2) APPLICATION.—

(A) SUBMISSION.—The head of an SBIR participating agency or STTR participating agency may establish a pilot program under paragraph (1) if the agency head, not later than 90 days before the 1st day of the fiscal year in which the pilot program is to be established, submits to the Administrator a written application that describes a compelling reason, including unusually high regulatory, systems integration, or other costs relating to development or manufacturing of identifiable, highly promising small business technologies or a class of small business technologies expected to substantially advance the mission of the Federal agency, why additional investment in SBIR or STTR technologies is necessary.

(B) DETERMINATION.—The Administrator shall—

(i) make a determination whether to approve an application under subparagraph (A) not later than 30 days before the first day of the fiscal year for which the application is submitted;

(ii) publish the determination in the Federal Register; and

(iii) make a copy of the determination and any related materials available to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and Committee on Science, Space, and Technology of the House of Representatives.

(3) CONSIDERATION OF LIKELIHOOD OF DOMESTIC MANUFACTURE.—In making an award under this subsection, an agency head shall consider whether the technology to be supported by the award is likely to be manufactured in the United States.

1 (4) MAXIMUM AMOUNT OF AWARD.—An agency head shall not make  
2 an award under the pilot program under paragraph (1) in excess of the  
3 amount that is equal to 3 times the dollar amounts generally estab-  
4 lished for phase II awards under subsection section 263104(b)(10) or  
5 263203(c)(2)(I) of this title.

6 (5) REGISTRATION.—The recipient an award under a pilot program  
7 under paragraph (1) shall register with the Administrator in a registry  
8 that is available to the public.

9 (6) REPORT.—The head of a Federal agency that carries out a pilot  
10 program under paragraph (1) shall include in the annual report of the  
11 Federal agency to the Administrator—

12 (A) an analysis of the various activities considered for inclusion  
13 in the pilot program; and

14 (B) a statement of the reasons why each activity considered was  
15 included or not included, as the case may be.

16 (7) TERMINATION OF AUTHORITY.—The authority to establish a  
17 pilot program under this subsection expires at the end of fiscal year  
18 2017.

19 **§ 263315. Timing of release of funding**

20 An SBIR participating agency or STTR participating agency shall, to the  
21 extent possible, attempt to shorten the amount of time between the provi-  
22 sion of notice of an award under the SBIR program or STTR program and  
23 the subsequent release of funding under the award.

24 **§ 263316. Reporting on timing of final decisions on propos-**  
25 **als and releases of funding**

26 An SBIR participating agency or STTR participating agency shall pro-  
27 vide the Administrator—

28 (1) the average length of time that the SBIR participating agency  
29 or STTR participating agency takes to make a final decision on propos-  
30 als submitted under the SBIR program or STTR program;

31 (2) the average length of time that the SBIR participating agency  
32 or STTR participating agency takes to release funding under an award  
33 under the SBIR program or STTR program; and

34 (3) the goals established to reduce those lengths of time.

35 **§ 263317. Release of contact information to economic devel-**  
36 **opment organizations**

37 (a) CONSENT OF SMALL BUSINESS CONCERN.—An SBIR agency or  
38 STTR agency shall provide a means by which a small business concern that  
39 is an SBIR applicant or an STTR applicant may indicate to the SBIR  
40 agency or STTR agency whether the SBIR agency or STTR agency has the  
41 consent of the small business concern to—



1 (1) identify the small business concern to appropriate local and State  
2 economic development organizations as an SBIR applicant or an STTR  
3 applicant; and

4 (2) release the contact information of the small business concern to  
5 the economic development organizations.

6 (b) RULES.—The Administrator shall issue rules to implement this sec-  
7 tion. The rules shall include a requirement that an SBIR agency or STTR  
8 agency include in the SBIR or STTR application a provision under which  
9 an applicant may indicate consent for purposes of subsection (a).

10 **§ 263318. Prevention of fraud, waste, and abuse**

11 (a) IN GENERAL.—The SBIR policy directives under section 263104 of  
12 this title and the STTR policy directive under section 263203 of this title  
13 shall include measures to prevent fraud, waste, and abuse in the SBIR pro-  
14 gram and STTR program.

15 (b) CONTENTS.—The measures required under subsection (a) include—

16 (1) definitions or descriptions of fraud, waste, and abuse;

17 (2) guidelines for the monitoring and oversight of applicants to and  
18 recipients of awards under the SBIR program or STTR program;

19 (3) a requirement that an SBIR participating agency or STTR par-  
20 ticipating agency include information concerning the method estab-  
21 lished by the Inspector General of the SBIR participating agency or  
22 STTR participating agency to report fraud, waste, and abuse (includ-  
23 ing any telephone hotline or web-based platform)—

24 (A) on the website of the SBIR participating agency or STTR  
25 participating agency; and

26 (B) in any solicitation or notice of funding opportunity issued  
27 by the SBIR participating agency or STTR participating agency  
28 for the SBIR program or STTR program; and

29 (4) a requirement that an applicant for and a small business concern  
30 that receives funding under the SBIR program or STTR program shall  
31 certify whether the applicant or small business concern is in compliance  
32 with the laws relating to the SBIR program and the STTR program  
33 and the conduct guidelines established under the SBIR policy directives  
34 and the STTR policy directive.

35 (c) PROCEDURES AND REQUIREMENTS FOR CERTIFICATION.—

36 (1) IN GENERAL.—In consultation with the Council of Inspectors  
37 General on Integrity and Efficiency, and after providing notice and an  
38 opportunity for public comment, the Administrator shall develop proce-  
39 dures and requirements for a certification under subsection (b)(4).

40 (2) CONTENTS.—The form of certification developed under para-  
41 graph (1) may—

1 (A) cover the lifecycle of an award to require certifications at  
2 the application, funding, reporting, and closeout phases of every  
3 SBIR award and STTR award;

4 (B) require the small business concern to certify compliance  
5 with the principal investor primary employment requirement, the  
6 small business concern definition requirement, and the perform-  
7 ance of work requirements as set forth in the directive applicable  
8 to the award;

9 (C) require a small business concern to disclose whether the  
10 small business concern has applied for, has plans to apply for, or  
11 has received an SBIR award or STTR award for identical or es-  
12 sentially equivalent work (as defined under the SBIR policy direc-  
13 tives and the STTR policy directive), and require the small busi-  
14 ness concern to certify that the award that the small business con-  
15 cern is applying for or obtaining funding for is not identical or es-  
16 sentially equivalent to work that the small business concern has  
17 performed, or will perform, in connection with any other SBIR  
18 award or STTR award that the small business concern has applied  
19 for or has received from any other agency except as fully disclosed  
20 to all funding agencies; and

21 (D) require that the small business concern certify that the  
22 small business concern will perform or did perform the work on  
23 the award at its facilities with its employees, unless otherwise indi-  
24 cated.

25 (d) INSPECTORS GENERAL.—The Inspector General of a participating  
26 SBIR agency or participating SBIR agency shall cooperate to prevent fraud,  
27 waste, and abuse in the SBIR program and STTR program by—

28 (1) establishing fraud detection indicators;

29 (2) reviewing regulations and operating procedures of the participat-  
30 ing SBIR agency or participating SBIR agency;

31 (3) coordinating information sharing between Federal agencies, to  
32 the extent otherwise permitted under Federal law; and

33 (4) improving the education and training of and outreach to—

34 (A) administrators of the SBIR program and the STTR pro-  
35 gram of the participating SBIR agency or participating SBIR  
36 agency;

37 (B) applicants to the SBIR program or STTR program; and

38 (C) recipients of awards under the SBIR program or STTR  
39 program.

1    **§ 263319. Competitive selection procedures**

2       All funds awarded, appropriated, or otherwise made available in accord-  
3    ance with section 263101 or 263201 of this title shall be awarded pursuant  
4    to competitive and merit-based selection procedures.

5    **§ 263320. Limitation on pilot programs**

6       (a) DEFINITION OF COVERED PILOT PROGRAM.—In this section, the  
7    term “covered pilot program” means an initiative, project, innovation, or  
8    other activity that—

- 9           (1) is established by the Administrator;  
10          (2) relates to an SBIR program or STTR program; and  
11          (3) is not specifically authorized by law.

12       (b) PILOT PROGRAMS IN OPERATION ON DECEMBER 31, 2011.—The Ad-  
13    ministrator may carry out a covered pilot program that is in operation on  
14    December 31, 2011, only until December 31, 2014.

15       (c) PILOT PROGRAMS ESTABLISHED AFTER DECEMBER 31, 2011.—The  
16    Administrator may carry out a covered pilot program established after De-  
17    cember 31, 2011—

- 18           (1) only for a period of 3 years period beginning on the date on  
19       which the covered pilot program is established; and  
20           (2) if the covered pilot program does not continue and is not based  
21       on, in any manner, a previously established covered pilot program.

22    **§ 263321. Minimum standards for participation**

23       (a) PROGRESS TO PHASE II SUCCESS.—

24           (1) ESTABLISHMENT OF SYSTEM AND MINIMUM COMMERCIALIZATION  
25       RATE.—Not later December 31, 2012, the head of an SBIR participat-  
26       ing agency or STTR participating agency shall—

27           (A) establish a system to measure, where appropriate, the suc-  
28       cess of small business concerns with respect to the receipt of phase  
29       II SBIR awards or STTR awards for projects that have received  
30       phase I SBIR awards or STTR awards;

31           (B) establish a minimum performance standard for small busi-  
32       ness concerns with respect to the receipt of phase II SBIR awards  
33       or STTR awards for projects that have received phase I SBIR  
34       awards or STTR awards; and

35           (C) begin evaluating, each fiscal year, whether each small busi-  
36       ness concern that received a phase I SBIR award or STTR award  
37       from the SBIR participating agency or STTR participating agency  
38       meets the minimum performance standard established under sub-  
39       paragraph (B).

40           (2) CONSEQUENCE OF FAILURE TO MEET MINIMUM COMMERCIALIZA-  
41       TION RATE.—If the head of an SBIR participating agency or STTR

1 participating agency determines that a small business concern that re-  
2 ceived a phase I SBIR award or STTR award from the SBIR partici-  
3 pating agency or STTR participating agency is not meeting the mini-  
4 mum performance standard established under paragraph (1)(B), the  
5 small business concern shall not participate in phase I (or phase II if  
6 under the authority of section 263108 of this title) of the SBIR pro-  
7 gram or STTR program of the SBIR participating agency or STTR  
8 participating agency during the 1-year period beginning on the date on  
9 which the determination is made.

10 (b) PROGRESS TO PHASE III SUCCESS.—

11 (1) ESTABLISHMENT OF SYSTEM AND MINIMUM COMMERCIALIZATION  
12 RATE.—Not later than December 31, 2013, the head of an SBIR par-  
13 ticipating agency or STTR participating agency shall—

14 (A) establish a system to measure, where appropriate, the suc-  
15 cess of small business concerns with respect to the receipt of phase  
16 III SBIR awards or STTR awards for projects that have received  
17 phase I SBIR awards or STTR awards;

18 (B) establish a minimum performance standard for small busi-  
19 ness concerns with respect to the receipt of phase III SBIR  
20 awards or STTR awards for projects that have received phase I  
21 SBIR awards or STTR awards; and

22 (C) begin evaluating, each fiscal year, whether each small busi-  
23 ness concern that received a phase I SBIR award or STTR award  
24 from SBIR participating agency or STTR participating agency  
25 meets the minimum performance standard established under sub-  
26 paragraph (B).

27 (2) CONSEQUENCE OF FAILURE TO MEET MINIMUM COMMERCIALIZA-  
28 TION RATE.—If the head of an SBIR participating agency or STTR  
29 participating agency determines that a small business concern that re-  
30 ceived a phase I SBIR award or STTR award from the SBIR partici-  
31 pating agency or STTR participating agency is not meeting the mini-  
32 mum performance standard established under paragraph (1)(B), the  
33 small business concern shall not participate in phase I (or phase II if  
34 under the authority of section 263108 of this title) of the SBIR pro-  
35 gram or STTR program of the SBIR participating agency or STTR  
36 participating agency during the 1-year period beginning on the date on  
37 which the determination is made.

38 (c) SBA OVERSIGHT.—

39 (1) APPROVAL AND PUBLICATION OF SYSTEMS AND MINIMUM PER-  
40 FORMANCE STANDARDS.—A system and minimum performance stand-  
41 ard established under subsection (a) or (b) shall be submitted to the

1 Administrator by the head of an SBIR participating agency or STTR  
 2 participating agency and shall be subject to the approval of the Admin-  
 3 istrator. In making a determination with respect to approval, the Ad-  
 4 ministrator shall ensure that the minimum performance standard ex-  
 5 ceeds a de minimis level. The Administrator shall publish on the SBA  
 6 website the systems and minimum performance standards approved.

7 (2) SUBMISSION OF EVALUATION RESULTS BY AGENCY.—The head  
 8 of an SBIR participating agency or STTR participating agency shall  
 9 submit to the Administrator the results of each evaluation conducted  
 10 under subsection (a) or (b).

11 (d) NOTICE AND COMMENT.—At least 60 days before becoming effective,  
 12 a system and minimum performance standard established under subsection  
 13 (a) or (b) and an approval provided by the Administrator under subsection  
 14 (c)(1) shall be preceded by the provision of notice of and an opportunity  
 15 for public comment on the system, standard, or approval.

16 **§ 263322. Publication of information relating to notice of**  
 17 **and application for SBIR awards and STR awards**

18 To increase the number of small business concerns that receive awards  
 19 under the SBIR or STTR programs of SBIR participating agencies and  
 20 STTR participating agencies, and to simplify the application process for  
 21 SBIR awards and STTR awards, the Administrator shall maintain a web-  
 22 site on which the Administrator shall publish such information relating to  
 23 notice of and application for awards under the SBIR program and STTR  
 24 program of each SBIR participating agency and STTR participating agency  
 25 as the Administrator determines to be appropriate.

26 **Division J—Small Business Development**  
 27 **Center Program**

28 **Chapter 271—Small Business Development**  
 29 **Center Program**

Sec.

- 271101. Definitions.
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30 **§ 271101. Definitions**

31 In this chapter:

1 (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Adminis-  
2 trator” means the Associate Administrator for Small Business Develop-  
3 ment Centers.

4 (2) FINANCIAL ASSISTANCE.—The term “financial assistance” means  
5 financial assistance under a grant, contract, or cooperative agreement.

6 (3) FINANCIAL ASSISTANCE AGREEMENT.—The term “financial as-  
7 sistance agreement” means a grant agreement, contract, or cooperative  
8 agreement under which financial assistance is provided under this  
9 chapter.

10 (4) PROGRAM.—The term “program” means the small business de-  
11 velopment center program under this chapter.

12 (5) QUALIFIED ENTITY.—The term “qualified entity” means—

13 (A) a public or private institution of higher education (including  
14 a land-grant college or university, a college or school of business,  
15 engineering, commerce, or agriculture, and a community college or  
16 junior college);

17 (B) a women’s business center; and

18 (C) any other entity if the entity, on December 31, 1990, was  
19 receiving a grant or was a party to a contract or cooperative  
20 agreement under this chapter.

21 (6) STATE.—The term “State” means a State, the District of Co-  
22 lumbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

23 **§ 271102. Financial assistance agreements**

24 (a) IN GENERAL.—Under a program to be known as the small business  
25 development center program, the Administrator may provide financial as-  
26 sistance to a qualified entity to assist in establishing a small business devel-  
27 opment center project for the purpose of providing—

28 (1) a small business oriented employment or natural resources devel-  
29 opment program;

30 (2) studies, research, and counseling concerning the managing, fi-  
31 nancing, and operation of small business concerns;

32 (3) management and technical assistance regarding participation by  
33 small business concerns in international markets, export promotion,  
34 and technology transfer;

35 (4) delivery or distribution of services and information in connection  
36 with an activity described in paragraph (1), (2), or (3); and

37 (5) providing access to business analysts that can refer small busi-  
38 ness concerns to available experts.

39 (b) REQUIREMENTS.—The Administrator shall require an applicant for fi-  
40 nancial assistance under this chapter with performance commencing on or  
41 after January 1, 1992, to—

1 (1) have its own budget; and

2 (2) primarily use institutions of higher education and women's busi-  
3 ness centers to provide services to the small business community.

4 (c) TERM.—The term of a financial assistance agreement under sub-  
5 section (a) shall be made on a calendar year basis or to coincide with the  
6 Federal fiscal year.

7 (d) COOPERATION TO PROVIDE INTERNATIONAL TRADING SERVICES.—

8 (1) INFORMATION AND SERVICES.—A small business development  
9 center shall work in close cooperation with SBA regional offices and  
10 SBA district offices, the Department of Commerce, appropriate Fed-  
11 eral, State, and local agencies (including State trade agencies), and the  
12 small business community to serve as an active information dissemina-  
13 tion and service delivery mechanism for existing trade promotion, trade  
14 finance, trade adjustment, trade remedy, and trade data collection pro-  
15 grams of particular utility for small business concerns.

16 (2) COOPERATION WITH STATE TRADE AGENCIES AND EXPORT AS-  
17 SISTANCE CENTERS.—A small business development center that coun-  
18 sels a small business concern on issues relating to international trade  
19 shall—

20 (A) consult with State trade agencies and export assistance cen-  
21 ters to provide appropriate services to the small business concern;  
22 and

23 (B) as necessary, refer the small business concern to a State  
24 trade agency or export assistance center for further counseling or  
25 assistance.

26 (e) MANAGEMENT.—

27 (1) IN GENERAL.—The program shall be under the general manage-  
28 ment and oversight of the Administrator for the delivery of programs  
29 and services to the small business community.

30 (2) PROGRAMS AND SERVICES.—Programs and services referred to  
31 in paragraph (1) shall be jointly developed, negotiated, and agreed on,  
32 with full participation of a qualified entity and the Administrator,  
33 under an executed financial assistance agreement between the qualified  
34 entity and the Administrator.

35 (f) ASSOCIATION OF SMALL BUSINESS DEVELOPMENT CENTERS.—

36 (1) IN GENERAL.—Small business development centers may form an  
37 Association to pursue matters of common concern.

38 (2) RECOGNITION; DOCUMENTS.—

39 (A) IN GENERAL.—If more than a majority of the small busi-  
40 ness development centers that are operating under agreements

1 with the Administrator are members of an Association formed  
2 under paragraph (1), the Administrator shall—

3 (i) recognize the existence and activities of the Association;

4 and

5 (ii) consult with the Association and develop documents—

6 (I) announcing the annual scope of activities under  
7 this chapter;

8 (II) requesting proposals to deliver assistance as pro-  
9 vided in this chapter; and

10 (III) governing the general operations and administra-  
11 tion of the program, specifically including the develop-  
12 ment of regulations and a uniform negotiated financial  
13 assistance agreement for use on an annual basis when  
14 entering into individual negotiated financial assistance  
15 agreements with small business development centers.

16 (B) INCORPORATION OF CERTAIN PROVISIONS.—In regulations  
17 under subparagraph (A)(ii)((III), provisions governing audits, cost  
18 principles and administrative requirements for financial assistance  
19 that are included in uniform requirements of Office of Manage-  
20 ment and Budget Circulars shall be incorporated by reference and  
21 shall not be set forth in summary or other form.

22 (3) LEVERAGING OF RESOURCES.—On an annual basis, a small busi-  
23 ness development center shall review and coordinate public and private  
24 partnerships and cosponsorships with the Administrator for the pur-  
25 pose of more efficiently leveraging available resources on a national and  
26 a State basis.

27 (g) FUNDING.—

28 (1) MATCHING AMOUNT.—

29 (A) IN GENERAL.—The Administrator shall require as a condi-  
30 tion of any financial assistance agreement (or amendment or  
31 modification of a financial assistance agreement) made to a quali-  
32 fied entity under this chapter that a matching amount (excluding  
33 any fees collected from recipients of such assistance) equal to the  
34 amount of the financial assistance be provided from sources other  
35 than the Federal Government, to be comprised of not less than 50  
36 percent cash and not more than 50 percent of indirect costs and  
37 in-kind contributions.

38 (B) RESTRICTION.—The matching amount described in sub-  
39 paragraph (A) shall not include any indirect costs or in-kind con-  
40 tributions derived from any Federal program.

41 (2) FUNDING FORMULA.—



1 (A) IN GENERAL.—Subject to subparagraph (C), the total  
2 amount of financial assistance received by recipients of financial  
3 assistance in a State under this section shall be equal to an  
4 amount determined in accordance with the following formula:

5 (i) PRO RATA BASIS.—The annual amount made available  
6 under section 109103(a) of this title for the small business  
7 development center program, less any reductions made for ex-  
8 penses authorized by subparagraph (E), shall be divided on  
9 a pro rata basis, based on the percentage of the population  
10 of each State, as compared with the population of the United  
11 States.

12 (ii) MINIMUM FUNDING LEVEL.—If the pro rata amount  
13 calculated under clause (i) for any State is less than the mini-  
14 mum funding level under subparagraph (C), the Adminis-  
15 trator shall determine the aggregate amount necessary to  
16 achieve that minimum funding level for each such State.

17 (iii) DEDUCTION.—The aggregate amount calculated under  
18 clause (ii) shall be deducted from the amount calculated  
19 under clause (i) for States eligible to receive more than the  
20 minimum funding level. The deductions shall be made on a  
21 pro rata basis, based on the population of each such State,  
22 as compared with the total population of all such States.

23 (iv) ADDITION.—The aggregate amount deducted under  
24 clause (iii) shall be added to the amount of financial assist-  
25 ance of the States that are not eligible to receive more than  
26 the minimum funding level in order to achieve the minimum  
27 funding level for each such State, except that the eligible  
28 amount of financial assistance to any State shall not be re-  
29 duced to an amount below the minimum funding level.

30 (B) DETERMINATION OF AMOUNT OF FINANCIAL ASSISTANCE.—  
31 The amount of financial assistance for which a State is eligible to  
32 apply under this paragraph shall be the amount determined under  
33 subparagraph (A), subject to any modifications required under  
34 subparagraph (C), and shall be based on the amount available for  
35 the fiscal year in which performance of the financial assistance  
36 agreement commences, but not including amounts distributed in  
37 accordance with subparagraph (D). The total amount of financial  
38 assistance received by recipients of financial assistance in a State  
39 under any provision of this paragraph shall not exceed the amount  
40 of matching funds from sources other than the Federal Govern-  
41 ment, as required under paragraph (1).

1 (C) MINIMUM FUNDING LEVEL.—The amount of the minimum  
2 funding level for each State shall be determined for each fiscal  
3 year based on the amount made available for that fiscal year to  
4 carry out this chapter, as follows:

5 (i) NOT LESS THAN \$81,500,000 AND NOT MORE THAN  
6 \$90,000,000 MADE AVAILABLE.—If the amount made available  
7 is not less than \$81,500,000 and not more than \$90,000,000,  
8 the minimum funding level shall be \$500,000.

9 (ii) LESS THAN \$81,500,000 MADE AVAILABLE.—If the  
10 amount made available is less than \$81,500,000, the mini-  
11 mum funding level shall be the remainder of \$500,000 minus  
12 a percentage of \$500,000 equal to the percentage amount by  
13 which the amount made available is less than \$81,500,000.

14 (iii) MORE THAN \$90,000,000 MADE AVAILABLE.—If the  
15 amount made available is more than \$90,000,000, the mini-  
16 mum funding level shall be the sum of \$500,000 plus a per-  
17 centage of \$500,000 equal to the percentage amount by which  
18 the amount made available exceeds \$90,000,000.

19 (D) DISTRIBUTIONS.—Subject to subparagraph (C), if qualified  
20 entities in any State do not apply for, or use the full funding eligi-  
21 bility for the State for a fiscal year, the Administrator shall dis-  
22 tribute the remaining funds as follows:

23 (i) AMOUNT LESS THAN THE AMOUNT RECEIVED IN FISCAL  
24 YEAR 2000.—If the amount of financial assistance to any  
25 State is less than the amount received by recipients of finan-  
26 cial assistance in that State in fiscal year 2000, the Adminis-  
27 trator shall distribute the remaining funds, on a pro rata  
28 basis, based on the percentage of shortage of each such State,  
29 as compared with the total amount of such remaining funds  
30 available, to the extent necessary to increase the amount of  
31 the financial assistance to the amount received by recipients  
32 of financial assistance in that State in fiscal year 2000, or  
33 until such funds are exhausted, whichever occurs first.

34 (ii) REMAINING AMOUNT.—If any funds remain after appli-  
35 cation of clause (i), the remaining amount may be distributed  
36 as supplemental financial assistance to applicants in any  
37 State, as the Administrator determines, in the discretion of  
38 the Administrator, to be appropriate, after consultation with  
39 the Association.

40 (E) USE OF AMOUNTS.—

(i) IN GENERAL.—Of the amounts made available in any fiscal year to carry out this chapter—

(I) not more than \$500,000 may be used by the Administrator to pay expenses described in paragraphs (2) to (4) of section 109103(a) of this title; and

(II) not more than \$500,000 may be used by the Administrator to pay the examination expenses described in section 109103(a)(5) of this title.

(ii) LIMITATION.—No funds described in clause (i) may be used for examination expenses under section 109103(a)(5) of this title if the use would reduce the amount of financial assistance made available under subparagraph (A)(i) to less than \$85,000,000 (after excluding any amounts provided in appropriations Acts, or accompanying report language, for specific institutions or for purposes other than the general program) or would further reduce the amount of such financial assistance below that amount.

(F) EXCLUSIONS.—Financial assistance provided to grant recipients in a State by the Administrator or another Federal agency to carry out subsection (j) or section 271104(b)(7) of this title, or for supplemental financial assistance under subparagraph (D)(ii) of this paragraph, shall not be included in the calculation of maximum funding for a State under subparagraph (B) of this paragraph.

(h) PORTABLE ASSISTANCE FOR STARTUP AND SUSTAINABILITY NON-MATCHING FINANCIAL ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—From the funds appropriated under section 109103(h) of this title, the Administrator shall reserve not less than \$1,000,000 for each fiscal year to develop portable assistance for startup and sustainability non-matching financial assistance programs to be conducted by eligible small business development centers in communities that are economically challenged as a result of a business or government facility downsizing or closing that has resulted in the loss of jobs or small business instability.

(2) MAXIMUM AMOUNT.—Non-matching financial assistance under this subsection shall not exceed \$100,000.

(3) USE.—Non-matching financial assistance under this subsection shall be used for small business development center personnel expenses and related small business programs and services.

(i) FEDERAL CONTRACTS WITH SMALL BUSINESS DEVELOPMENT CENTERS.—

1 (1) IN GENERAL.—Subject to paragraph (2), a small business devel-  
2 opment center may enter into a contract with a Federal agency to pro-  
3 vide specific assistance to small business concerns.

4 (2) CONTRACT PREREQUISITES.—

5 (A) IN GENERAL.—Before bidding on a contract under para-  
6 graph (1), a small business development center shall receive ap-  
7 proval from the Associate Administrator of the subject and general  
8 scope of the contract.

9 (B) APPROVAL.—Approval of a contract under paragraph (1)  
10 shall be based on a determination that—

11 (i) the contract will provide assistance to small business  
12 concerns; and

13 (ii) performance of the contract will not hinder the small  
14 business development center in carrying out the terms of the  
15 financial assistance agreement received by the small business  
16 development center from the Administrator.

17 (3) EXEMPTION FROM MATCHING REQUIREMENT.—A contract under  
18 this subsection shall not be subject to the matching funds or eligibility  
19 requirements of subsection (g).

20 (4) INAPPLICABILITY TO CERTAIN CONTRACTING GOALS.—Notwith-  
21 standing any other provision of law, a contract for assistance under  
22 this subsection shall not be applied to a Federal agency's contracting  
23 goal under section 251106 of this title for small business concerns  
24 owned and controlled by socially and economically disadvantaged indi-  
25 viduals, small business concerns owned and controlled by women, or  
26 other small business concerns.

27 (j) ADDITIONAL FINANCIAL ASSISTANCE.—

28 (1) IN GENERAL.—A qualified entity that is funded by the Adminis-  
29 trator as a small business development center may apply to the Admin-  
30 istrator for additional financial assistance to be used solely to assist,  
31 as provided in paragraphs (2) to (7) of section 271104(b), in—

32 (A) the development and enhancement of exports by small busi-  
33 ness concerns;

34 (B) technology transfer; and

35 (C) outreach, development, and enhancement of minority-owned  
36 small business startups or expansions, HUBZone small business  
37 concerns, veteran-owned small business startups or expansions,  
38 and women-owned small business startups or expansions, in com-  
39 munities affected by base closings or military or corporate down-  
40 sizing or in rural or underserved communities.

1           (2) COMPLIANCE REQUIREMENT.—An applicant applying for addi-  
2           tional financial assistance under paragraph (1) shall comply with all of  
3           the provisions of this chapter, including providing matching funds.

4           (3) FUNDING.—Funding under this subsection shall be effective for  
5           any fiscal year to the extent provided in advance in appropriations  
6           Acts.

7           (4) LIMITATION ON AMOUNT OF GRANT.—No recipient of funds  
8           under this subsection shall receive financial assistance that would ex-  
9           ceed its pro rata share of a \$15,000,000 program based on the popu-  
10          lations to be served by the small business development center as com-  
11          pared with the total population of the United States.

12          (5) MINIMUM STATE ELIGIBILITY AMOUNT.—The minimum amount  
13          of eligibility for recipients of financial assistance in any State shall be  
14          \$100,000.

15          (6) FINANCIAL ASSISTANCE TO NONPROFIT ENTITIES.—

16           (A) IN GENERAL.—In a State described in subparagraph (B),  
17           the Administrator may provide financial assistance to a nonprofit  
18           entity in the State to carry out the activities specified in this sub-  
19           section.

20           (B) STATES.—A State referred to in subparagraph (A) is a  
21           State in which—

22           (i) the Administrator has not provided financial assistance  
23           under subsection (a); or

24           (ii) no application for financial assistance has been made  
25           by a small business development center under this subsection  
26           within 60 days after the later of—

27           (I) the effective date of a financial assistance agree-  
28           ment under subsection (a) to the small business develop-  
29           ment center; or

30           (II) the date on which the Administrator notifies the  
31           financial assistance recipient funded under subsection (a)  
32           that funds are available for applications for financial as-  
33           sistance under this subsection.

34          (C) MATCHING FUNDS.—A nonprofit entity that receives finan-  
35          cial assistance under this paragraph shall comply with the match-  
36          ing funds requirement of subsection (g).

37          (D) APPROPRIATIONS.—Financial assistance under this para-  
38          graph shall be effective for any fiscal year only to the extent pro-  
39          vided in advance in an appropriations Act.

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1 (E) PRO RATA SHARE.—The amount of financial assistance pro-  
2 vided under this paragraph in a State shall be limited to the pro  
3 rata share provisions of paragraph (4).

4 (k) PRIVACY REQUIREMENTS.—

5 (1) IN GENERAL.—A small business development center, consortium  
6 of small business development centers, or contractor or agent of a small  
7 business development center may not disclose the name, address, or  
8 telephone number of any individual or small business concern receiving  
9 assistance under this chapter without the consent of the individual or  
10 small business concern unless—

11 (A) the Administrator is ordered to make such a disclosure by  
12 a court in any civil or criminal enforcement action initiated by a  
13 Federal agency or State agency; or

14 (B) the Administrator considers such a disclosure to be nec-  
15 essary for the purpose of conducting a financial audit of a small  
16 business development center.

17 (2) LIMITATION.—A disclosure under this paragraph (1)(B) shall be  
18 limited to the information necessary for an audit.

19 (3) USE OF INFORMATION BY THE ADMINISTRATOR.—This chapter  
20 does not—

21 (A) restrict access by the Administrator to program activity  
22 data; or

23 (B) preclude the Administrator from using client information to  
24 conduct client surveys.

25 (4) REGULATIONS.—

26 (A) IN GENERAL.—The Administrator shall issue regulations to  
27 establish standards—

28 (i) for disclosures with respect to financial audits under  
29 paragraph (1)(B); and

30 (ii) for client surveys under paragraph (3)(B), including  
31 standards for oversight of such surveys and for dissemination  
32 and use of client information.

33 (B) MAXIMUM PRIVACY PROTECTION.—Regulations under this  
34 paragraph, shall, to the extent practicable, provide for the maxi-  
35 mum amount of privacy protection.

36 (C) INSPECTOR GENERAL.—Until the effective date of regula-  
37 tions under this paragraph, any client survey and the use of such  
38 information shall be approved by the Inspector General of SBA,  
39 who shall include such approval in a semiannual report.

1    **§ 271103. Plans**

2       (a) PROVISION OF FINANCIAL ASSISTANCE CONSISTENT WITH AREA  
3    PLAN.—Financial assistance shall not be made available to a qualified en-  
4    tity if approving the assistance would be inconsistent with a plan for the  
5    area of a State in which service is to be provided that has been adopted  
6    by an agency recognized by the State as authorized to adopt an area plan  
7    and approved by the Administrator in accordance with standards and re-  
8    quirements established under this chapter.

9       (b) PLAN.—

10       (1) IN GENERAL.—A qualified entity may apply to participate in the  
11       small business development center program by submitting to the Ad-  
12       ministrator for approval a plan that—

13           (A) identifies the entities authorized under this chapter to par-  
14       ticipate in the small business development center program;

15           (B) identifies the geographic area to be served;

16           (C) describes the services that the applicant would provide and  
17       the method for delivering the services;

18           (D) includes a budget; and

19           (E) includes any other information and assurances that the Ad-  
20       ministrator may require to ensure that the qualified entity will  
21       carry out the activities eligible for assistance.

22       (2) ACTION BY THE ADMINISTRATOR.—

23           (A) IN GENERAL.—The Administrator may approve, condi-  
24       tionally approve, or reject a qualified entity plan or combination  
25       of plans submitted.

26           (B) REVIEW.—In all cases, the Administrator shall review a  
27       qualified entity plan—

28           (i) for conformity with an area plan approved under sub-  
29       section (a); and

30           (ii) with a view toward providing small business concerns  
31       with the most comprehensive and coordinated assistance in  
32       the State or part of a State to be served.

33       (c) ASSISTANCE OUTSIDE THE STATE.—The Administrator may permit  
34       a small business development center to provide advice, information, and as-  
35       sistance, as described in section 271104 of this title, to small business con-  
36       cerns located outside the State in which the small business development cen-  
37       ter is located, but only to the extent that the small business concerns are  
38       located within close geographical proximity to the small business develop-  
39       ment center, as determined by the Administrator.

1     **§ 271104. Services**

2       (a) IN GENERAL.—A small business development center shall assist small  
3     business concerns in solving problems concerning operations, manufacturing,  
4     engineering, technology exchange and development, personnel administra-  
5     tion, marketing, sales, merchandising, finance, accounting, business strategy  
6     development, and other disciplines required for small business growth and  
7     expansion, innovation, increased productivity, and management improve-  
8     ment, and for decreasing industry economic concentrations.

9       (b) SERVICES TO BE PROVIDED.—Services provided by a small business  
10    development center shall include—

11       (1) furnishing one-to-one individual counseling to small business con-  
12    cerns, including—

13           (A) working with individuals to increase awareness of basic  
14           credit practices and credit requirements;

15           (B) working with individuals to develop business plans, financial  
16           packages, credit applications, and contract proposals;

17           (C) working with the Administrator to develop and provide in-  
18           formational tools for use in working with individuals on pre-busi-  
19           ness startup planning, existing business expansion, and export  
20           planning; and

21           (D) working with individuals referred by the local SBA offices  
22           and participating lenders;

23       (2) assisting in technology transfer, research and development (in-  
24    cluding applied research), and coupling from existing sources to small  
25    business concerns, including—

26           (A) working to increase the access of small business concerns  
27           to the capabilities of automated flexible manufacturing systems;

28           (B) working through existing networks and developing new net-  
29           works for technology transfer that encourage partnership between  
30           the small business and academic communities to help commer-  
31           cialize university-based research and development and introduce  
32           university-based engineers and scientists to their counterparts in  
33           small technology-based firms; and

34           (C) exploring the viability of developing shared production facili-  
35           ties, under appropriate circumstances;

36       (3)(A) in cooperation with the Department of Commerce and other  
37    relevant Federal agencies, actively assisting small business concerns in  
38    exporting by—

39           (i) identifying and developing potential export markets for small  
40           business concerns;

41           (ii) facilitating export transactions for small business concerns;



1 (iii) developing linkages between small business concerns and  
2 prescreened foreign buyers;

3 (iv) assisting small business concerns in participating in inter-  
4 national trade shows;

5 (v) assisting small business concerns in obtaining export financ-  
6 ing; and

7 (vi) facilitating the development or reorientation of marketing  
8 and production strategies; and

9 (B) where appropriate, working with the Administrator in coopera-  
10 tion with the State to establish a State international trade center for  
11 the purposes described in subparagraph (A);

12 (4)(A) developing a program in conjunction with the Export-Import  
13 Bank of the United States and local and regional SBA offices that will  
14 enable the small business development center to serve as an informa-  
15 tion network and to assist small business concern applicants for financ-  
16 ing programs of the Export-Import Bank of the United States; and

17 (B) otherwise identifying and helping to make available export fi-  
18 nancing programs to small business concerns;

19 (5) working closely with the small business community, small busi-  
20 ness consultants, State agencies, universities, and other appropriate  
21 groups to make translation services more readily available to small  
22 business concerns doing business, or attempting to develop business, in  
23 foreign markets;

24 (6) cooperating with the Department of Commerce and other rel-  
25 evant Federal agencies to increase access to available export market in-  
26 formation systems, including the Commercial Information Management  
27 System;

28 (7) assisting small business concerns in developing and implementing  
29 strategic business plans to timely and effectively respond to the  
30 planned closure (or reduction) of a Department of Defense facility  
31 within the community, or actual or projected reductions in small busi-  
32 ness concerns' business base due to the actual or projected termination  
33 (or reduction) of a Department of Defense program or a contract in  
34 support of a Department of Defense program by—

35 (A) developing broad economic assessments of the adverse im-  
36 pacts of—

37 (i) the closure (or reduction) of the Department of Defense  
38 facility on the small business concerns providing goods or  
39 services to the facility or to the military and civilian personnel  
40 stationed or working at the facility; and

1 (ii) the termination (or reduction) of a Department of De-  
2 fense program (or contracts under a Department of Defense  
3 program) on the small business concerns participating in the  
4 program as a prime contractor, subcontractor, or supplier at  
5 any tier;

6 (B) developing, in conjunction with appropriate Federal, State,  
7 and local governmental entities and private sector organizations,  
8 the parameters of a transition adjustment program adaptable to  
9 the needs of individual small business concerns;

10 (C) conducting appropriate programs to inform the affected  
11 small business community regarding the anticipated adverse im-  
12 pacts identified under subparagraph (A) and the economic adjust-  
13 ment assistance available to small business concerns; and

14 (D) assisting small business concerns in developing and imple-  
15 menting an individualized transition business plan;

16 (8)(A) maintaining current information concerning Federal, State,  
17 and local regulations that affect small business concerns and counsel  
18 small business concerns on methods of compliance; and

19 (B) providing counseling and technology development when necessary  
20 to help small business concerns find solutions for complying with envi-  
21 ronmental, energy, health, safety, and other Federal, State, and local  
22 regulations;

23 (9) coordinating and conducting research into technical and general  
24 small business problems for which there are no ready solutions;

25 (10) providing and maintaining a comprehensive library that con-  
26 tains current information and statistical data needed by small business  
27 concerns;

28 (11) maintaining a working relationship and open communications  
29 with the financial and investment communities, legal associations, local  
30 and regional private consultants, and local and regional small business  
31 groups and associates to help address the various needs of the small  
32 business community;

33 (12) conducting in-depth surveys for local small business groups to  
34 develop general information regarding the local economy and general  
35 small business strengths and weaknesses in the locality;

36 (13) in cooperation with the Department of Commerce, the Adminis-  
37 trator, and relevant Federal agencies, actively assisting rural small  
38 business concerns in exporting by—

39 (A) identifying and developing potential export markets for  
40 rural small business concerns;

- 1 (B) facilitating export transactions for rural small business con-  
2 cerns;
- 3 (C) developing linkages between rural small business concerns  
4 and prescreened foreign buyers;
- 5 (D) assisting rural small business concerns in participating in  
6 international trade shows; and
- 7 (E) assisting rural small business concerns in obtaining export  
8 financing and developing marketing and production strategies;
- 9 (14) assisting rural small business concerns in developing marketing  
10 and production strategies that will enable rural small business concerns  
11 to better compete in the domestic market;
- 12 (15) assisting rural small business concerns by—
  - 13 (A) providing technical assistance needed by rural small busi-  
14 ness concerns;
  - 15 (B) making available managerial assistance to rural small busi-  
16 ness concerns; and
  - 17 (C) providing information and assistance in obtaining financing  
18 for business startups and expansion;
- 19 (16) in conjunction with the United States National Tourism Orga-  
20 nization, assist rural small business concerns in developing the tourism  
21 potential of rural communities by—
  - 22 (A) identifying the cultural, historic, recreational, and scenic re-  
23 sources of rural communities;
  - 24 (B) providing assistance to small business concerns in develop-  
25 ing tourism marketing and promotion plans relating to tourism in  
26 rural areas; and
  - 27 (C) assisting small business concerns in obtaining capital for  
28 starting or expanding businesses primarily serving tourists;
- 29 (17) maintaining lists of local and regional private consultants to  
30 whom small business concerns can be referred;
- 31 (18) providing information to small business concerns regarding  
32 compliance with regulatory requirements;
- 33 (19) developing informational publications, establishing resource cen-  
34 ters of reference materials, and distributing compliance guides pub-  
35 lished under section 212(a) of the Small Business Regulatory Enforce-  
36 ment Fairness Act of 1996 (5 U.S.C. 601 note, Public Law 104–121);
- 37 (20) providing small business concern owners with access to a wide  
38 variety of export-related information by establishing on-line computer  
39 linkages between small business development centers and an inter-  
40 national trade data information network with ties to the United States  
41 Export Assistance Center program; and

1           (21) providing information and assistance to small business concerns  
2           with respect to establishing drug-free workplace programs on or before  
3           October 1, 2006.

4           (e) UPGRADING AND MODIFICATION OF SERVICES.—A small business de-  
5           velopment center shall continue to upgrade and modify its services, as need-  
6           ed, in order to meet the changing and evolving needs of the small business  
7           community.

8           (d) LOCATION.—

9           (1) PROXIMITY OF SERVICE.—A small business development center  
10          shall provide service as close as possible to small business concerns by  
11          providing extension services and using satellite locations when nec-  
12          essary.

13          (2) FACILITIES AND STAFF.—The facilities and staff of a small busi-  
14          ness development center shall be located in such places as to provide  
15          maximum accessibility and benefits to the small business concerns that  
16          the small business development center is intended to serve.

17          (e) OTHER PROGRAMS.—To the extent possible, a small business develop-  
18          ment center shall make full use of other Federal and State government pro-  
19          grams that are concerned with aiding small business concerns.

20          (f) STAFF.—A small business development center shall have a full-time  
21          staff, including a full-time director who shall have the authority to make  
22          expenditures under the small business development center's budget and who  
23          shall manage the program activities.

24          (g) ACCESS.—A small business development center shall have access to—

25               (1) business analysts to counsel, assist, and inform small business  
26               clients;

27               (2) technology transfer agents to provide state-of-art technology to  
28               small business concerns through coupling with national and regional  
29               technology data sources;

30               (3) information specialists to assist in providing information searches  
31               and referrals to small business;

32               (4) part-time professional specialists to conduct research or to pro-  
33               vide counseling assistance whenever the need arises; and

34               (5) laboratory facilities and adaptive engineering facilities.

35          (h) USE OF SMALL BUSINESS VENDORS.—A small business development  
36          center shall use and compensate as 1 of its resources qualified vendors that  
37          are small business concerns, including private management consultants, pri-  
38          vate consulting engineers, and private testing laboratories, to provide serv-  
39          ices as described in this section to small business concerns on behalf of the  
40          small business development center.

(i) COOPERATION IN THE PROVISION OF SERVICES.—In performing the services described in subsection (b), a small business development center shall work in close cooperation with SBA regional offices and SBA local offices, the local small business community, and appropriate State and local agencies.

(j) INFORMATION SHARING SYSTEM.—

(1) IN GENERAL.—The Associate Administrator, in consultation with the small business development centers, shall develop and implement an information sharing system.

(2) FINANCIAL ASSISTANCE.—

(A) IN GENERAL.—Subject to amounts approved in advance in appropriations Acts, the Administrator may provide grants or enter into cooperative agreements to 1 or more small business development centers to carry out this subsection.

(B) DURATION.—Financial assistance under subparagraph (A) shall be awarded for a period of not more than 5 years.

(C) MATCHING FUNDS.—The matching funds provisions of section 271102 of this title shall not be applicable to a grant or cooperative agreement under subparagraph (A).

(3) FUNCTIONS.—The information sharing system shall—

(A) allow small business development centers participating in the small business development center program to exchange information about their programs; and

(B) provide information central to technology transfer.

**§ 271105. Export enhancement plans**

(a) IN GENERAL.—Where appropriate, a small business development center shall work in conjunction with the relevant State agency and the Department of Commerce to develop a comprehensive plan for enhancing the export potential of small business concerns located in the State.

(b) STATE OFFICE OF INTERNATIONAL TRADE.—An export enhancement plan may provide for—

(1) the cofunding and staffing of a State office of international trade within a small business development center, using joint Federal and State funding; and

(2) any other appropriate measures directed at improving the export performance of small business concerns in the State.

**§ 271106. Assistance from Federal laboratories**

(a) IN GENERAL.—A laboratory that is operated and funded by the Federal Government shall cooperate with the Administrator in developing and establishing programs to support small business development centers by—

(1) making facilities and equipment available;

- 1           (2) providing experiment station capabilities in adaptive engineering;  
2           (3) providing library and technical information processing capabili-  
3           ties; and  
4           (4) providing professional staff for consulting.

5           (b) REIMBURSEMENT.—The Administrator may reimburse a laboratory  
6           for the provision of services described in subsection (a).

7           **§ 271107. Assistance from the National Science Foundation**

8           The National Science Foundation shall cooperate with the Administrator  
9           and with small business development centers in developing and establishing  
10          programs to support small business development centers.

11          **§ 271108. Assistance from the National Aeronautics and**  
12          **Space Administration**

13          The National Aeronautics and Space Administration and regional tech-  
14          nology transfer centers supported by the National Aeronautics and Space  
15          Administration shall cooperate with small business development centers par-  
16          ticipating in the small business development center program.

17          **§ 271109. National Small Business Development Center Ad-**  
18          **visory Board**

19          (a) ESTABLISHMENT.—There is established a National Small Business  
20          Development Center Advisory Board (referred to in this section as the  
21          “Board”).

22          (b) MEMBERSHIP.—

23               (1) IN GENERAL.—The Board shall consist of 9 members appointed  
24               from civilian life by the Administrator.

25               (2) QUALIFICATIONS.—A member of the Board shall be a person of  
26               outstanding qualifications known to be familiar and sympathetic with  
27               small business needs and problems.

28               (3) REPRESENTATION.—Not more than 3 members of the Board  
29               shall be from universities or their affiliates, and 6 members shall be  
30               from small business concerns or associations representing small busi-  
31               ness concerns.

32               (4) TERM.—A member of the Board shall serve a term of 3 years,  
33               with one-third of the members changing each year.

34          (c) CHAIRMAN.—The Board shall elect a chairman.

35          (d) DUTIES.—The Board shall advise, counsel, and confer with the Asso-  
36          ciate Administrator in carrying out the duties described in this chapter.

37          (e) MEETINGS.—The Board shall meet at least semiannually and at the  
38          call of the Chairman of the Board.

39          (f) COMPENSATION.—A member of the Board shall be entitled to be com-  
40          pensated at the rate not in excess of the per diem equivalent of the maxi-  
41          mum rate payable under section 5376 of title 5 for each day engaged in

1 activities of the Board and shall be entitled to be reimbursed for expenses  
2 as a member of the Board.

3 **§ 271110. Small business development center advisory**  
4 **boards**

5 (a) ESTABLISHMENT.—A small business development center shall estab-  
6 lish an advisory board.

7 (b) CHAIRMAN.—A small business development center advisory board  
8 shall elect a chairman.

9 (c) DUTIES.—A small business development center advisory board shall  
10 advise, counsel, and confer with the director of the small business develop-  
11 ment center on all policy matters pertaining to the operation of the small  
12 business development center, including the persons that may be eligible to  
13 receive assistance from, and how local and regional private consultants may  
14 participate with, the small business development center.

15 **§ 271111. Program examination and accreditation**

16 (a) EXAMINATION.—The Administrator shall conduct a biennial pro-  
17 grammatic and financial examination of each small business development  
18 center.

19 (b) ACCREDITATION.—The Administrator may provide financial support,  
20 by contract or otherwise, to the Association for the purpose of developing  
21 a small business development center accreditation program.

22 (c) EXTENSION OR RENEWAL OF FINANCIAL AGREEMENTS.—

23 (1) IN GENERAL.—In extending or renewing a financial assistance  
24 agreement of a small business development center, the Administrator  
25 shall consider the results of the examination and accreditation program  
26 conducted under subsections (a) and (b).

27 (2) ACCREDITATION REQUIREMENT.—

28 (A) IN GENERAL.—Except as provided in subparagraph (B), the  
29 Administrator may not renew or extend a financial assistance  
30 agreement with a small business development center unless the  
31 small business development center has been approved under the  
32 accreditation program conducted under this section.

33 (B) WAIVER.—The Associate Administrator may waive the ac-  
34 creditation requirement on a showing that the small business de-  
35 velopment center is making a good faith effort to obtain accredita-  
36 tion.

37 **§ 271112. Limitations on authority**

38 (a) APPROPRIATIONS.—The authority to enter into financial assistance  
39 agreements under this chapter shall be in effect for a fiscal year only to  
40 the extent and in such amounts as are provided in advance in appropria-  
41 tions Acts.

1 (b) SUSPENSION, TERMINATION, OR FAILURE TO RENEW OR EXTEND  
2 FINANCIAL ASSISTANCE AGREEMENT.—After the Administrator enters into  
3 a financial assistance agreement with a qualified entity under this chapter,  
4 the Administrator shall not suspend, terminate, or fail to renew or extend  
5 the financial assistance agreement unless the Administrator provides the  
6 qualified entity with written notification stating the reasons for the suspen-  
7 sion, termination, or failure to renew or extend and affording the qualified  
8 entity an opportunity for a hearing, appeal, or other administrative proceed-  
9 ing under chapter 5 of title 5.

10 (c) COMPETITION FOR SUCCESSOR FINANCIAL ASSISTANCE AGREE-  
11 MENTS.—If a financial assistance agreement with a qualified entity under  
12 this chapter is not renewed or extended, any award of a successor financial  
13 assistance agreement to another qualified entity under this chapter shall be  
14 made on a competitive basis.

15 (d) NO OTHER FUNDING.—The Administrator shall not fund any small  
16 business development center or variation of a small business development  
17 center except as authorized by this chapter.

18 **§ 271113. Prohibition of fees for counseling service**

19 A small business development center shall not impose or otherwise collect  
20 a fee or other compensation in connection with the provision of counseling  
21 service under this chapter.

22 **§ 271114. Veterans assistance and services program**

23 (a) IN GENERAL.—A small business development center may apply for a  
24 grant under this section to carry out a veterans assistance and services pro-  
25 gram.

26 (b) ELEMENTS OF PROGRAM.—Under a program carried out with a grant  
27 under this subsection, a small business development center shall—

28 (1) create a marketing campaign to promote awareness and edu-  
29 cation of the services of the small business development center that are  
30 available to veterans, and to target the campaign toward veterans, serv-  
31 ice-disabled veterans, military units, Federal agencies, and veterans or-  
32 ganizations;

33 (2) use technology-assisted online counseling and distance learning  
34 technology to overcome the impediments to entrepreneurship faced by  
35 veterans and members of the Armed Forces; and

36 (3) increase coordination among organizations that assist veterans,  
37 including by establishing virtual integration of service providers and of-  
38 ferings for a 1-stop point of contact for veterans who are entrepreneurs  
39 or owners of small business concerns.

40 (c) AMOUNT OF GRANTS.—A grant under this section shall be for not less  
41 than \$75,000 and not more than \$250,000.



1 (d) FUNDING.—Subject to amounts approved in advance in appropria-  
 2 tions Acts, the Administrator may make grants or enter into cooperative  
 3 agreements to carry out this section.

4 **§ 271115. Grants for small business development centers**

5 (a) IN GENERAL.—The Administrator may make grants to small business  
 6 development centers to provide targeted technical assistance to small busi-  
 7 ness concerns seeking—

- 8 (1) access to capital or credit;
- 9 (2) Federal procurement opportunities;
- 10 (3) energy efficiency audits to reduce energy bills;
- 11 (4) opportunities to export products or provide services to foreign  
 12 customers;
- 13 (5) assistance in adopting, making innovations in, and using broad-  
 14 band technologies; or
- 15 (6) other assistance.

16 (b) ALLOCATION.—

17 (1) IN GENERAL.—Subject to paragraph (2), and notwithstanding  
 18 the requirements of section 271102(g)(2)(C) of this title, the amount  
 19 appropriated to carry out this section shall be allocated under the for-  
 20 mula under section 271102(g)(A) of this title.

21 (2) MINIMUM FUNDING.—The amount made available under this sec-  
 22 tion to each State shall be not less than \$325,000.

23 (3) TYPES OF USES.—Of the total amount of the grants awarded by  
 24 the Administrator under this section—

- 25 (A) not less than 80 percent shall be used for counseling of  
 26 small business concerns; and
- 27 (B) not more than 20 percent may be used for classes or semi-  
 28 nars.

29 (c) NO NON-FEDERAL SHARE.—Notwithstanding section  
 30 271102(g)(1)(A) of this title, the recipient of a grant under this section  
 31 shall not be required to provide non-Federal matching funds.

32 (d) DISTRIBUTION.—Not later than 30 days after the date on which  
 33 amounts are appropriated to carry out this section, the Administrator shall  
 34 disburse the total amount appropriated.

35 **Division K—Women’s Business Center**  
 36 **Program**

37 **Chapter 273—Women’s Business Center**  
 38 **Program**

Sec.

273101. Definitions.

273102. Financial assistance.

273103. Conditions of participation.

- 273104. Contract authority.
- 273105. 5-year period.
- 273106. Criteria.
- 273107. Program examination.
- 273108. Suspension, termination, or failure to renew or extend financial assistance.
- 273109. Continued funding for women's business centers.
- 273110. Privacy requirements.
- 273111. Expedited acquisition.

1     **§ 273101. Definitions**

2         In this chapter:

3             (1) ASSISTANT ADMINISTRATOR.—The term “Assistant Adminis-  
4             trator” means the Assistant Administrator of the Office of Women’s  
5             Business Ownership.

6             (2) PRIVATE NONPROFIT ORGANIZATION.—The term “private non-  
7             profit organization” means an entity that is described in section 501(c)  
8             of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) and exempt  
9             from taxation under section 501(a) of the Code (26 U.S.C. 501(a)).

10            (3) WOMEN’S BUSINESS CENTER SITE.—The term “women’s busi-  
11            ness center site” means the location of—

12                 (A) a women’s business center; or

13                 (B) 1 or more women’s business centers, established in conjunc-  
14             tion with another women’s business center in another location in  
15             a State or region—

16                         (i) that reach a distinct population that would otherwise  
17                         not be served;

18                         (ii) the services of which are targeted to women; and

19                         (iii) the scope, function, and activities of which are similar  
20             to those of the primary women’s business center or centers  
21             in conjunction with which it was established.

22     **§ 273102. Financial assistance**

23             (a) IN GENERAL.—The Administrator may provide financial assistance to  
24             a private nonprofit organization to conduct a 5-year project for the benefit  
25             of small business concerns owned and controlled by women.

26             (b) FORMS OF ASSISTANCE.—A project under subsection (a) shall pro-  
27             vide—

28                 (1) assistance in matters relating to financing, including training  
29             and counseling in—

30                         (A) how to apply for and secure business credit and investment  
31             capital;

32                         (B) preparing and presenting financial statements; and

33                         (C) managing cash flow and other financial operations of a busi-  
34             ness concern;

1 (2) management assistance, including training and counseling in how  
2 to plan, organize, staff, direct, and control each major activity and  
3 function of a small business concern; and

4 (3) marketing assistance, including training and counseling in—

5 (A) identifying and segmenting domestic and international mar-  
6 ket opportunities;

7 (B) preparing and executing marketing plans;

8 (C) developing pricing strategies;

9 (D) locating contract opportunities;

10 (E) negotiating contracts; and

11 (F) using varying public relations and advertising techniques.

12 (c) APPROPRIATIONS.—The authority of the Administrator to agree to  
13 provide financial assistance shall be in effect for each fiscal year only to the  
14 extent and in the amounts as are provided in advance in appropriations  
15 Acts.

16 **§ 273103. Conditions of participation**

17 (a) NON-FEDERAL CONTRIBUTIONS.—Subject to subsection (d), as a con-  
18 dition of receiving financial assistance under this chapter, a recipient orga-  
19 nization shall agree to obtain, after its application has been approved and  
20 notice of award has been issued, cash contributions from non-Federal  
21 sources as follows:

22 (1) In the 1st and 2d years, 1 non-Federal dollar for each 2 Federal  
23 dollars.

24 (2) In the 3d, 4th, and 5th years, 1 non-Federal dollar for each Fed-  
25 eral dollar.

26 (b) FORM OF NON-FEDERAL CONTRIBUTIONS.—Not more than one-half  
27 of the non-Federal sector matching assistance may be in the form of in-kind  
28 contributions that are budget line items only, including office equipment and  
29 office space.

30 (c) FORM OF FEDERAL CONTRIBUTIONS.—

31 (1) IN GENERAL.—Financial assistance under this chapter—

32 (A) may be made by grant, contract, or cooperative agreement;  
33 and

34 (B) may be provided—

35 (i) in a lump sum or in installments; and

36 (ii) in advance or by reimbursement.

37 (2) PARTIAL DISBURSEMENT BEFORE NON-FEDERAL FUNDS ARE OB-  
38 TAINED.—The Administrator may disburse up to 25 percent of each  
39 year's Federal share awarded to a recipient organization after notice  
40 of the award has been issued and before the non-Federal sector match-  
41 ing funds are obtained.

1           (3) FAILURE TO OBTAIN NON-FEDERAL FUNDING.—If a recipient of  
2           assistance fails to obtain the required non-Federal contribution during  
3           a project—

4                 (A) the recipient shall not be eligible thereafter for advance dis-  
5                 bursements—

6                         (i) during the remainder of that project; or

7                         (ii) for any other project for which the recipient is or may  
8                         be funded by the Administrator; and

9                 (B) before approving assistance to the recipient for any other  
10                project, the Administrator shall—

11                        (i) specifically determine whether the Administrator be-  
12                        lieves that the recipient will be able to obtain the requisite  
13                        non-Federal funding; and

14                        (ii) make a written finding stating the reasons for making  
15                        the determination.

16           (d) WAIVER OF NON-FEDERAL SHARE RELATING TO TECHNICAL ASSIST-  
17           ANCE AND COUNSELING.—

18                 (1) IN GENERAL.—On request by a recipient organization, the Ad-  
19                 ministrator may waive, in whole or in part, the requirement to obtain  
20                 non-Federal funds under this section for the technical assistance and  
21                 counseling activities of the recipient organization carried out using fi-  
22                 nancial assistance under this chapter for a fiscal year. The Adminis-  
23                 trator may waive the requirement to obtain non-Federal funds under  
24                 this subsection for successive fiscal years.

25                 (2) CONSIDERATIONS.—In determining whether to waive the require-  
26                 ment to obtain non-Federal funds under this subsection, the Adminis-  
27                 trator shall consider—

28                        (A) the economic conditions affecting the recipient organization;

29                        (B) the impact that a waiver would have on the credibility of  
30                        the women's business center program;

31                        (C) the demonstrated ability of the recipient organization to  
32                        raise non-Federal funds; and

33                        (D) the performance of the recipient organization.

34           (3) LIMITATIONS.—

35                 (A) IN GENERAL.—The Administrator shall not waive the re-  
36                 quirement to obtain non-Federal funds under this subsection if  
37                 granting the waiver would undermine the credibility of the wom-  
38                 en's business center program.

39                 (B) SUNSET.—The Administrator shall not waive the require-  
40                 ment to obtain non-Federal funds under this subsection for fiscal  
41                 year 2013 or any fiscal year thereafter.

(4) REPEAL.—Effective October 1, 2012, this section is amended—

(A) in subsection (a), by striking “Subject to subsection (d), as”  
and inserting “As”; and

(B) by striking this subsection.

**§ 273104. Contract authority**

(a) IN GENERAL.—A women’s business center may enter into a contract with a Federal agency to provide specific assistance to women and other underserved small business concerns.

(b) LIMITATION.—Performance of a contract under subsection (a) should not hinder a women’s business center in carrying out the terms of the grant, contract, or cooperative agreement received by the women’s business center from the Administrator.

**§ 273105. 5-year period**

(a) SUBMISSION OF PLAN.—An organization that applies for financial assistance under this chapter initially shall submit a 5-year plan to the Administrator on proposed fundraising and training activities.

(b) ASSISTANCE PERIOD.—An organization may receive financial assistance under this chapter for any 1 women’s business center site for a maximum of 5 years.

**§ 273106. Criteria**

(a) IN GENERAL.—The Administrator shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance.

(b) AVAILABILITY.—The criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administrator.

(c) CRITERIA INCLUDED.—The criteria shall include—

(1) the experience of the applicant in conducting programs or ongoing efforts designed to impart or upgrade the business skills of women business owners or potential owners;

(2) the present ability of the applicant to commence a project within a minimum amount of time;

(3) the ability of the applicant to provide training and services to a representative number of women who are both socially and economically disadvantaged; and

(4) the location for the women’s business center site proposed by the applicant.

**§ 273107. Program examination**

(a) IN GENERAL.—The Administrator shall—

(1) conduct an annual programmatic and financial examination of each women's business center under which a women's business center shall provide to the Administrator—

(A) an itemized cost breakdown of actual expenditures for costs incurred during the preceding year; and

(B)(i) documentation regarding the amount of matching assistance from non-Federal sources obtained and expended by the women's business center during the preceding year to meet the requirements of section 273103 of this title; and

(ii) with respect to any in-kind contributions described in section 273103(b) of this title that were used to satisfy the requirements of section 273103 of this title, verification of the existence and valuation of those contributions; and

(2) analyze the results of each such examination and, based on that analysis, make a determination regarding the programmatic and financial viability of each women's business center.

(b) CONDITIONS FOR CONTINUED FUNDING.—In determining whether to award a sustainability grant or renew financial assistance to a women's business center, the Administrator—

(1) shall consider the results of the most recent examination of the women's business center under subsection (a); and

(2) may withhold the award or renewal if the Administrator determines that—

(A)(i) the women's business center has failed to provide any information required to be provided under subparagraph (A) or (B) of subsection (a)(1); or

(ii) the information provided by the women's business center is inadequate; or

(B)(i) the women's business center has failed to provide any information required to be provided by the women's business center for purposes of the report of the Administrator under section 107111 of this title; or

(ii) the information provided by the women's business center is inadequate.

**§ 273108. Suspension, termination, or failure to renew or extend financial assistance**

After the Administrator agrees to provide financial assistance to an applicant under this chapter, the Administrator shall not suspend, terminate, or fail to renew or extend the financial assistance unless the Administrator—

(1) provides the applicant with written notification stating the reasons for suspension, termination, or failure to renew or extend; and

1           (2) affords the applicant an opportunity for a hearing, appeal, or  
2           other administrative proceeding under chapter 5 of title 5.

3   **§ 273109. Continued funding for women's business centers**

4           (a) IN GENERAL.—A nonprofit organization described in subsection (b)  
5           shall be eligible to receive, subject to subsection (c), a 3-year grant under  
6           this subsection.

7           (b) APPLICABILITY.—A nonprofit organization described in this sub-  
8           section is a nonprofit organization that has received funding under section  
9           273102 of this title.

10          (c) APPLICATION AND APPROVAL CRITERIA.—

11           (1) CRITERIA.—Subject to paragraph (2), the Administrator shall  
12           develop and publish criteria for the consideration and approval of appli-  
13           cations by nonprofit organizations under this section.

14           (2) CONTENTS.—Except as otherwise provided in this section, the  
15           conditions for participation in the grant program under this section  
16           shall be the same as the conditions for participation in the program  
17           under section 29(l) of the Small Business Act (15 U.S.C. 656(l)) (as  
18           in effect on May 25, 2007).

19           (3) NOTIFICATION.—Not later than 60 days after the date of the  
20           deadline to submit applications for each fiscal year, the Administrator  
21           shall approve or deny any application under this section and notify the  
22           applicant for each such application.

23          (d) AWARD OF GRANTS.—

24           (1) IN GENERAL.—Subject to the availability of appropriations, the  
25           Administrator shall make a grant for the Federal share of the cost of  
26           activities described in the application to each applicant approved under  
27           this section.

28           (2) AMOUNT.—A grant under this section shall be for not more than  
29           \$150,000 for each year of the grant.

30           (3) FEDERAL SHARE.—The Federal share of the cost of activities  
31           funded under this section shall be not more than 50 percent.

32           (4) PRIORITY.—In allocating funds made available for grants under  
33           this chapter, the Administrator shall give applications under this sec-  
34           tion priority over 1st-time applications under section 273102 of this  
35           title.

36          (e) RENEWAL.—

37           (1) IN GENERAL.—The Administrator may renew a grant under this  
38           section for additional 3-year periods, if the nonprofit organization sub-  
39           mits an application for renewal at such time, in such manner, and ac-  
40           companied by such information as the Administrator may establish.

1 (2) UNLIMITED RENEWALS.—There shall be no limitation on the  
 2 number of times that a grant may be renewed under paragraph (1).

3 **§ 273110. Privacy requirements**

4 (a) IN GENERAL.—A women’s business center may not disclose the name,  
 5 address, or telephone number of any individual or small business concern  
 6 receiving assistance under this chapter without the consent of the individual  
 7 or small business concern, unless—

8 (1) the Administrator is ordered to make such a disclosure by a  
 9 court in any civil or criminal enforcement action initiated by a Federal  
 10 agency or State agency; or

11 (2) the Administrator considers such a disclosure to be necessary for  
 12 the purpose of conducting a financial audit of a women’s business cen-  
 13 ter, but a disclosure under this paragraph shall be limited to the infor-  
 14 mation necessary for the audit.

15 (b) USE OF INFORMATION BY THE ADMINISTRATOR.—This section does  
 16 not—

17 (1) restrict access by the Administrator to program activity data; or

18 (2) preclude the Administrator from using client information (other  
 19 than the information described in paragraph (1)) to conduct client sur-  
 20 veys.

21 (c) REGULATIONS.—The Administrator shall issue regulations to establish  
 22 standards for requiring disclosures during a financial audit under subsection  
 23 (a)(2).

24 **§ 273111. Expedited acquisition**

25 Notwithstanding any other provision of law, the Administrator, acting  
 26 through the Assistant Administrator, may use such expedited acquisition  
 27 methods as the Administrator determines to be appropriate to carry out this  
 28 chapter, except that the Administrator shall ensure that all small business  
 29 sources are provided a reasonable opportunity to submit proposals.

30 **Division L—Veterans and Reservists**

31 **Chapter 275—Veterans and Reservists**

Sec.

275101. Definitions.

275102. Veterans business development interagency task force.

275103. Advisory Committee on Veterans Business Affairs.

275104. Participation in transition assistance program workshops.

275105. Women veterans business training

275106. Information collection.

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275110. Memorandum of understanding with the Secretary of Veterans Affairs and the Asso-  
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275111. Dissemination of information.

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 Veterans Affairs.

275113. Data collection.



275114. National Veterans Business Development Corporation.

275115. Relief from time limitations.

1     **§ 275101. Definitions**

2         In this chapter:

3             (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Adminis-  
4             trator” means the Associate Administrator for Veterans Business De-  
5             velopment under section 103104(b) of this title.

6             (2) ADVISORY COMMITTEE.—The term “Advisory Committee” means  
7             the Veterans Business Development Advisory Committee established  
8             under section 275103.

9             (3) CORPORATION.—The term “Corporation” means the National  
10            Veterans Business Development Corporation established under section  
11            275114.

12            (4) INTERAGENCY TASK FORCE.—The term “Interagency Task  
13            Force” means the veterans business development interagency task force  
14            established under section 275102.

15     **§ 275102. Veterans business development interagency task**  
16            **force**

17         (a) ESTABLISHMENT.—The President shall establish an interagency task  
18         force to coordinate the efforts of Federal agencies necessary to improve cap-  
19         ital and business development opportunities for, and ensure achievement of  
20         the pre-established Federal contracting goals for, small business concerns  
21         owned and controlled by service-disabled veterans and small business con-  
22         cerns owned and controlled by veterans.

23         (b) MEMBERSHIP.—The members of the Interagency Task Force shall in-  
24         clude—

25             (1) the Administrator, who shall serve as chairperson of the Inter-  
26             agency Task Force;

27             (2) a senior level representative from—

28                 (A) the Department of Veterans Affairs;

29                 (B) the Department of Defense;

30                 (C) SBA (in addition to the Administrator);

31                 (D) the Department of Labor;

32                 (E) the Department of the Treasury;

33                 (F) the General Services Administration;

34                 (G) the Office of Management and Budget; and

35             (3) 4 representatives from a veterans service organization or military  
36             organization or association, selected by the President.

37         (c) DUTIES.—The Interagency Task Force shall—

38             (1) consult regularly with veterans service organizations and military  
39             organizations in performing the duties of the Interagency Task Force;  
40             and

1 (2) coordinate administrative and regulatory activities and develop  
2 proposals relating to—

3 (A) improving capital access and capacity of small business con-  
4 cerns owned and controlled by service-disabled veterans and small  
5 business concerns owned and controlled by veterans through loans,  
6 surety bonding, and franchising;

7 (B) ensuring achievement of the pre-established Federal con-  
8 tracting goals for small business concerns owned and controlled by  
9 service-disabled veterans and small business concerns owned and  
10 controlled by veterans through expanded mentor-protégé assistance  
11 and matching such small business concerns with contracting op-  
12 portunities;

13 (C) increasing the integrity of certifications of status as a small  
14 business concern owned and controlled by service-disabled veterans  
15 or a small business concern owned and controlled by veterans;

16 (D) reducing paperwork and administrative burdens on veterans  
17 in accessing business development and entrepreneurship opportuni-  
18 ties;

19 (E) increasing and improving training and counseling services  
20 provided to small business concerns owned and controlled by veter-  
21 ans; and

22 (F) making other improvements relating to the support for vet-  
23 erans business development by the Federal Government.

24 **§ 275103. Advisory Committee on Veterans Business Affairs**

25 (a) IN GENERAL.—There is established an advisory committee to be  
26 known as the Advisory Committee on Veterans Business Affairs, which shall  
27 serve as an independent source of advice and policy recommendations to—

- 28 (1) the Administrator;  
29 (2) the Associate Administrator;  
30 (3) Congress;  
31 (4) the President; and  
32 (5) other United States policymakers.

33 (b) MEMBERSHIP.—

34 (1) IN GENERAL.—The Committee shall be composed of 15 members  
35 appointed by the Administrator, of whom—

36 (A) 8 shall be veterans who are owners of small business con-  
37 cerns; and

38 (B) 7 shall be representatives of veterans organizations.

39 (2) POLITICAL AFFILIATION.—Not more than 8 members of the  
40 Committee shall be of the same political party as the President.

41 (3) PROHIBITION OF FEDERAL EMPLOYMENT.—

1 (A) IN GENERAL.—Except as provided in subparagraph (B), no  
2 member of the Advisory Committee may serve as an officer or em-  
3 ployee of the United States.

4 (B) EXCEPTION.—A member of the Advisory Committee who  
5 accepts a position as an officer or employee of the United States  
6 after the date of the member's appointment to the Advisory Com-  
7 mittee may continue to serve on the Advisory Committee for not  
8 more than 30 days after accepting the position.

9 (4) TERM OF SERVICE.—THE TERM OF SERVICE OF A MEMBER OF  
10 THE ADVISORY COMMITTEE SHALL BE 3 YEARS.

11 (5) VACANCIES.—The Administrator shall fill any vacancies on the  
12 membership of the Advisory Committee not later than 30 days after  
13 the date on which the vacancy occurs.

14 (6) CHAIRPERSON.—

15 (A) IN GENERAL.—The members of the Advisory Committee  
16 shall elect 1 of the members to be Chairperson of the Advisory  
17 Committee.

18 (B) VACANCIES IN OFFICE OF CHAIRPERSON.—Any vacancy in  
19 the office of the Chairperson of the Advisory Committee shall be  
20 filled by the Advisory Committee at the 1st meeting of the Advi-  
21 sory Committee following the date on which the vacancy occurs.

22 (c) DUTIES.—The duties of the Advisory Committee shall be to—

23 (1) review, coordinate, and monitor plans and programs, developed  
24 in the public and private sectors, that affect the ability of small busi-  
25 ness concerns owned and controlled by veterans to obtain capital and  
26 credit and to access markets;

27 (2) promote the collection of business information and survey data  
28 as they relate to veterans and small business concerns owned and con-  
29 trolled by veterans;

30 (3) monitor and promote plans, programs, and operations of Federal  
31 agencies that may contribute to the formation and growth of small  
32 business concerns owned and controlled by veterans;

33 (4) develop and promote initiatives, policies, programs, and plans de-  
34 signed to foster small business concerns owned and controlled by veter-  
35 ans; and

36 (5) in cooperation with the Corporation, develop a comprehensive  
37 plan, to be updated annually, for joint public-private sector efforts to  
38 facilitate growth and development of small business concerns owned  
39 and controlled by veterans.

40 (d) POWERS.—

1           (1) HEARINGS.—Subject to subsection (e), the Advisory Committee  
2           may hold such hearings, sit and act at such times and places, take such  
3           testimony, and receive such evidence as the Advisory Committee consid-  
4           ers advisable to carry out its duties.

5           (2) INFORMATION FROM FEDERAL AGENCIES.—On request of the  
6           Chairperson of the Advisory Committee, the head of any Federal agen-  
7           cy or the Government Accountability Office shall furnish such informa-  
8           tion to the Advisory Committee as the Advisory Committee considers  
9           to be necessary to carry out its duties.

10          (3) USE OF MAILS.—The Advisory Committee may use the United  
11          States mails in the same manner and under the same conditions as  
12          other Federal agencies.

13          (4) GIFTS.—The Advisory Committee may accept, use, and dispose  
14          of gifts or donations of services or property.

15          (e) MEETINGS.—

16           (1) IN GENERAL.—The Advisory Committee shall meet, not less than  
17           3 times per year, at the call of the Chairperson or at the request of  
18           the Administrator.

19           (2) LOCATION.—Each meeting of the full Advisory Committee shall  
20           be held at the SBA headquarters in Washington, District of Columbia.  
21           The Administrator shall provide suitable meeting facilities and such ad-  
22           ministrative support as is necessary for each full meeting of the Advi-  
23           sory Committee.

24           (3) TASK GROUPS.—The Advisory Committee may from time to time  
25           establish temporary task groups as may be necessary in order to carry  
26           out the duties of the Advisory Committee.

27          (f) COMPENSATION AND EXPENSES.—

28           (1) NO COMPENSATION.—Members of the Advisory Committee shall  
29           serve without compensation for their service to the Advisory Commit-  
30           tee.

31           (2) EXPENSES.—The members of the Advisory Committee shall be  
32           reimbursed for travel and subsistence expenses in accordance with sec-  
33           tion 5703 of title 5.

34          (g) REPORT.—Not later than 30 days after the end of each fiscal year,  
35          the Committee shall submit to Congress and the President a report describ-  
36          ing the activities of the Advisory Committee and any recommendations de-  
37          veloped by the Advisory Committee for the promotion of small business con-  
38          cerns owned and controlled by veterans.

1    **§ 275104. Participation in transition assistance program**  
2                   **workshops**

3           (a) IN GENERAL.—The Associate Administrator shall increase veteran  
4    outreach by ensuring that veteran business outreach centers regularly par-  
5    ticipate, on a nationwide basis, in the workshops of the transition assistance  
6    program of the Department of Labor.

7           (b) PRESENTATIONS.—In carrying out subsection (a), a veteran business  
8    outreach center may provide grants to entities located in transition assist-  
9    ance program locations to make presentations on the opportunities available  
10   from the Administrator for recently separating or separated veterans. A  
11   presentation under this subsection shall include, at a minimum, a descrip-  
12   tion of the entrepreneurial and business training resources available from  
13   the Administrator.

14          (c) WRITTEN MATERIALS.—The Associate Administrator shall—

15               (1) create written materials that provide comprehensive information  
16               on self-employment and veterans entrepreneurship, including informa-  
17               tion on resources available from the Administrator on such topics; and

18               (2) make the materials created under paragraph (1) available to the  
19               Secretary of Labor for inclusion in the transition assistance program  
20               manual.

21          (d) REPORTS.—The Associate Administrator shall submit to Congress  
22   progress reports on the implementation of this section.

23    **§ 275105. Women veterans business training**

24          The Associate Administrator shall—

25               (1) compile information on existing resources available to women vet-  
26               erans for business training, including resources for—

27                       (A) vocational and technical education;

28                       (B) general business skills, such as marketing and accounting;

29                       and

30                       (C) business assistance programs targeted to women veterans;

31                       and

32               (2) disseminate the information compiled under paragraph (1)  
33               through veteran business outreach centers and women’s business cen-  
34               ters.

35    **§ 275106. Information collection**

36          (a) IDENTIFICATION.—The Secretary of Veterans Affairs, in consultation  
37   with the Assistant Secretary for Veterans’ Employment and Training and  
38   the Administrator, shall engage in efforts each year to identify small busi-  
39   ness concerns owned and controlled by disabled veterans in the United  
40   States.

1 (b) PROVISION OF INFORMATION.—The Secretary of Veterans Affairs  
2 shall inform each small business concern identified under this section that  
3 information on Federal procurement is available from the Administrator.

4 **§ 275107. Entrepreneurial training, counseling, and manage-**  
5 **ment assistance**

6 The Administrator shall take such actions as are necessary to ensure that  
7 small business concerns owned and controlled by disabled veterans have ac-  
8 cess to programs established under this subtitle that provide entrepreneurial  
9 training, business development assistance, counseling, and management as-  
10 sistance to small business concerns, including, among others, the small busi-  
11 ness development center program and the SCORE program.

12 **§ 275108. Outreach**

13 (a) IN GENERAL.—The Administrator, the Secretary of Veterans Affairs,  
14 and the Assistant Secretary of Labor for Veterans' Employment and Train-  
15 ing shall develop and implement a program of comprehensive outreach to  
16 assist disabled veterans.

17 (b) ACTIVITIES.—The program under subsection (a) shall include busi-  
18 ness training and management assistance, employment and relocation coun-  
19 seling, and dissemination of information on veterans' benefits and veterans'  
20 entitlements.

21 **§ 275109. Memorandum of understanding with SCORE**

22 (a) IN GENERAL.—The Administrator shall enter into a memorandum of  
23 understanding with SCORE to provide for—

24 (1) the appointment by SCORE in its national office of an individual  
25 to act as National Veterans Business Coordinator, whose duties shall  
26 relate exclusively to veterans business matters, and who shall be re-  
27 sponsible for the establishment and administration of a program to  
28 coordinate counseling and training regarding entrepreneurship to veter-  
29 ans through the chapters of SCORE throughout the United States;

30 (2) the provision of assistance by SCORE in maintaining a toll-free  
31 telephone number and a website to provide access for veterans to infor-  
32 mation about the counseling and training regarding entrepreneurship  
33 available to veterans through SCORE; and

34 (3) the collection of statistics concerning services provided by  
35 SCORE to service-disabled veterans and other veterans for inclusion in  
36 each annual report published by the Administrator under section  
37 107114 of this title.

38 (b) RESOURCES.—The Administrator shall provide SCORE such re-  
39 sources as the Administrator determines to be necessary for SCORE to  
40 carry out the requirements of the memorandum of understanding specified  
41 under subsection (a).

1    **§ 275110. Memorandum of understanding with the Secretary**  
2                   **of Veterans Affairs and the Association**

3           (a) IN GENERAL.—The Secretary of Veterans Affairs, the Administrator,  
4   and the head of the Association shall enter into a memorandum of under-  
5   standing with respect to entrepreneurial assistance to service-disabled veter-  
6   ans and other veterans through small business development centers and fa-  
7   cilities of the Department of Veterans Affairs.

8           (b) FORMS OF ASSISTANCE.—Assistance provided under the memoran-  
9   dum of understanding shall include—

10           (1) conducting of studies and research, and the distribution of infor-  
11   mation generated by such studies and research, on the formation, man-  
12   agement, financing, marketing, and operation of small business con-  
13   cerns by veterans;

14           (2) provision of training and counseling to veterans concerning the  
15   formation, management, financing, marketing, and operation of small  
16   business concerns;

17           (3) provision of management and technical assistance to the owners  
18   and operators of small business concerns regarding international mar-  
19   kets, the promotion of exports, and the transfer of technology;

20           (4) provision of assistance and information to veterans regarding  
21   procurement opportunities with Federal, State, and local agencies, es-  
22   pecially such agencies funded in whole or in part with Federal funds;

23           (5) establishment of an information clearinghouse to collect and dis-  
24   tribute information, including by electronic means, on the assistance  
25   programs of Federal, State, and local governments, and of the private  
26   sector, including information on office locations, key personnel, tele-  
27   phone numbers, mail and electronic addresses, and contracting and  
28   subcontracting opportunities;

29           (6) provision of internet or other distance learning academic instruc-  
30   tion for veterans in business subjects, including accounting, marketing,  
31   and business fundamentals; and

32           (7) compilation of a list of small business concerns owned and con-  
33   trolled by service-disabled veterans that provide products or services  
34   that could be procured by the United States, and delivery of the list  
35   to each Federal agency.

36           (c) LIST OF SMALL BUSINESS CONCERNS.—The list described in sub-  
37   section (b)(7)—

38           (1) shall be delivered in hard copy and electronic form; and

39           (2) shall include the name and address of each small business con-  
40   cern owned and controlled by service-disabled veterans and the prod-  
41   ucts or services that it provides.

1    **§ 275111. Dissemination of information**

2       Each fiscal year, the Secretary of Veterans Affairs shall—

3           (1) in consultation with the Assistant Secretary of Labor for Veter-  
4           ans' Employment and Training and the Administrator, identify small  
5           business concerns owned and controlled by veterans in the United  
6           States; and

7           (2) inform each small business concern owned and controlled by vet-  
8           erans identified under paragraph (1) that information on Federal pro-  
9           curement is available from the Administrator, as provided in section  
10          241115(b) of this title.

11    **§ 275112. Memorandum of understanding with the Secretary**  
12       **of Labor and the Secretary of Veterans Affairs**

13       (a) IN GENERAL.—The Secretary of Labor, the Secretary of Veterans Af-  
14       fairs, and the Administrator shall enter into a memorandum of understand-  
15       ing to provide for coordination of vocational rehabilitation services, technical  
16       and managerial assistance, and financial assistance to veterans (including  
17       service-disabled veterans) seeking to employ themselves by forming or ex-  
18       panding small business concerns.

19       (b) CONTENTS.—The memorandum of understanding shall include recom-  
20       mendations for expanding existing programs or establishing new programs  
21       to provide services described in subsection (a) or assistance to veterans (in-  
22       cluding service-disabled veterans).

23    **§ 275113. Data collection**

24       The Federal Procurement Data System described in section  
25       1122(a)(4)(A) of title 41 shall collect data regarding the percentage and  
26       dollar value of prime contracts and subcontracts awarded to small business  
27       concerns owned and controlled by veterans (including small business con-  
28       cerns owned and controlled by service-disabled veterans).

29    **§ 275114. National Veterans Business Development Corpora-**  
30       **tion**

31       (a) DEFINITIONS.—In this section:

32           (1) ADVISORY BOARD.—The term “Advisory Board” means the Pro-  
33           fessional Certification Advisory Board established under subsection (i).

34           (2) BOARD OF DIRECTORS.—The term “Board of Directors” means  
35           the board of directors of the Corporation.

36           (3) CORPORATION.—The term “Corporation” means the National  
37           Veterans Business Development Corporation established by subsection

38           (b).

39       (b) ESTABLISHMENT.—

40           (1) IN GENERAL.—There is established a federally chartered cor-  
41           poration to be known as the National Veterans Business Development



1 Corporation, which shall be incorporated under the laws of the District  
2 of Columbia and which shall have the powers granted in this section.

3 (2) STATUS.—Notwithstanding any other provision of law, the Cor-  
4 poration is a private entity and not an agency, instrumentality, author-  
5 ity, entity, or establishment of the United States Government.

6 (c) PURPOSES OF THE CORPORATION.—The purposes of the Corporation  
7 shall be—

8 (1) to expand the provision of and improve access to technical assist-  
9 ance regarding entrepreneurship for the Nation's veterans; and

10 (2) to assist veterans with the formation and expansion of small  
11 business concerns by working with and organizing public and private  
12 resources, including those of—

13 (A) SBA;

14 (B) the Department of Veterans Affairs, Department of Labor,  
15 Department of Commerce, and Department of Defense;

16 (C) SCORE;

17 (D) small business development centers; and

18 (E) the business development staffs of each Federal agency.

19 (d) BOARD OF DIRECTORS.—

20 (1) IN GENERAL.—The management of the Corporation shall be  
21 vested in a Board of Directors composed of 9 voting members and 3  
22 nonvoting ex officio members.

23 (2) APPOINTMENT OF VOTING MEMBERS.—The President shall, after  
24 considering recommendations proposed by the Chairmen and Ranking  
25 Members of the Committee on Small Business and Entrepreneurship  
26 and Committee on Veterans Affairs of the Senate and the Committee  
27 on Small Business and Committee on Veterans Affairs of the House  
28 of Representatives, appoint United States citizens to be voting mem-  
29 bers of the Board of Directors, not more than 5 of whom shall be mem-  
30 bers of the same political party.

31 (3) EX OFFICIO MEMBERS.—The Administrator, the Secretary of  
32 Defense, and the Secretary of Veterans Affairs shall serve as the non-  
33 voting ex officio members of the Board of Directors.

34 (4) CHAIRPERSON.—The voting members of the Board of Directors  
35 shall elect 1 such member to serve as chairperson of the Board of Di-  
36 rectors for a term of 2 years.

37 (5) TERMS OF VOTING MEMBERS.—

38 (A) IN GENERAL.—A voting member of the Board of Directors  
39 shall serve a term of 6 years.

40 (B) UNEXPIRED TERMS.—A member of the Board of Directors  
41 appointed to fill a vacancy occurring before the expiration of the

1 term for which the member's predecessor was appointed shall be  
2 appointed only for the remainder of the term. A member may  
3 serve after the expiration of that member's term until a successor  
4 takes office.

5 (6) VACANCIES.—A vacancy on the Board of Directors shall be filled  
6 in the manner in which the original appointment was made. In the case  
7 of a vacancy in the office of the Administrator or the Secretary of Vet-  
8 erans Affairs, and pending the appointment of a successor, an acting  
9 appointee for the vacancy may serve as an ex officio member.

10 (7) INELIGIBILITY FOR OTHER OFFICES.—No voting member of the  
11 Board of Directors may be an officer or employee of the United States  
12 while serving as a member of the Board of Directors or during the 2-  
13 year period preceding that service.

14 (8) FAIRNESS, IMPARTIALITY, AND NONDISCRIMINATION.—The  
15 Board of Directors shall administer the affairs of the Corporation fair-  
16 ly, impartially, and without discrimination.

17 (9) OBLIGATIONS AND EXPENSES.—The Board of Directors shall  
18 prescribe the manner in which the obligations of the Corporation may  
19 be incurred and in which its expenses shall be allowed and paid.

20 (10) QUORUM.—Five voting members of the Board of Directors shall  
21 constitute a quorum, but a lesser number may hold hearings.

22 (e) CORPORATE POWERS.—The Corporation shall have the authority—

23 (1) to adopt and use a corporate seal;

24 (2) to have succession until dissolved by Act of Congress;

25 (3) to make contracts or grants;

26 (4) to sue and be sued and to file and defend against lawsuits in  
27 Federal or State court;

28 (5) to appoint, through the actions of the Board of Directors, offi-  
29 cers and employees of the Corporation, to define their duties and re-  
30 sponsibilities and fix their compensation, and to dismiss at will such  
31 officers or employees;

32 (6) to prescribe, through the actions of the Board of Directors, by-  
33 laws not inconsistent with Federal law and the law of the District of  
34 Columbia, regulating the manner in which its general business may be  
35 conducted and the manner in which the privileges granted to it by law  
36 may be exercised;

37 (7) to exercise, through the actions of the Board of Directors or duly  
38 authorized officers, all powers specifically granted by this section, and  
39 such incidental powers as are necessary;

40 (8) to solicit, receive, and disburse funds from private, Federal,  
41 State, and local organizations;

1           (9) to accept and employ or dispose of in furtherance of the purposes  
2           of this section any money or property, real, personal, or mixed, tangible  
3           or intangible, received by gift, devise, bequest, or otherwise;

4           (10) to accept voluntary and uncompensated services; and

5           (11) to use the United States mails in the same manner and under  
6           the same conditions as the Federal agencies.

7       (f) CORPORATE FUNDS.—

8           (1) DEPOSIT OF FUNDS.—The Board of Directors shall deposit all  
9           funds of the Corporation in federally chartered and insured depository  
10          institutions until the funds are disbursed under paragraph (2).

11          (2) DISBURSEMENT OF FUNDS.—Funds of the Corporation may be  
12          disbursed only for purposes that—

13               (A) are approved by the Board of Directors by a recorded vote  
14               with a quorum present; and

15               (B) are in accordance with the purposes of the Corporation as  
16               specified in subsection (c).

17       (g) NETWORK OF INFORMATION AND ASSISTANCE CENTERS.—In carry-  
18       ing out the purposes of the Corporation specified in subsection (c), the Cor-  
19       poration shall establish and maintain a network of information and assist-  
20       ance centers for use by veterans and the public.

21       (h) PROFESSIONAL CERTIFICATION ADVISORY BOARD.—

22           (1) IN GENERAL.—Acting through the Board of Directors, the Cor-  
23       poration shall establish a Professional Certification Advisory Board to  
24       create uniform guidelines and standards for the professional certifi-  
25       cation of members of the Armed Services to aid in their efficient and  
26       orderly transition to civilian occupations and professions and to remove  
27       potential barriers in the areas of licensure and certification.

28       (2) MEMBERSHIP.—

29           (A) IN GENERAL.—The members of the Advisory Board—

30               (i) shall serve without compensation;

31               (ii) shall meet in the District of Columbia not less than  
32               quarterly; and

33               (iii) shall be appointed by the Board of Directors as pro-  
34               vided in subparagraphs (B) and (C).

35           (B) PRIVATE SECTOR MEMBERS.—The Board of Directors shall  
36       appoint not fewer than 7 members for terms of 2 years to rep-  
37       resent private sector organizations and associations, including the  
38       American Association of Community Colleges, the Society for  
39       Human Resource Managers, the Coalition for Professional Certifi-  
40       cation, the Council on Licensure and Enforcement, and the Amer-  
41       ican Legion.

1 (C) PUBLIC SECTOR MEMBERS.—The Board of Directors  
2 shall—

3 (i) invite public sector members to serve at the discretion  
4 of Federal agencies;

5 (ii) encourage the participation of the Under Secretary of  
6 Defense for Personnel and Readiness;

7 (iii) encourage the participation of two officers from each  
8 branch of the Armed Forces to represent the Training Com-  
9 mands of their branch; and

10 (iv) seek the participation and guidance of the Assistant  
11 Secretary of Labor for Veterans' Employment and Training.

12 (i) ANNUAL REPORTS.—On or before October 1 of each year, the Board  
13 of Directors shall submit to the President and Congress a report that—

14 (1) describes the activities and accomplishments of the Corporation  
15 for the preceding year;

16 (2) includes the Corporation's findings regarding the efforts of Fed-  
17 eral, State, and private organizations to assist veterans in the forma-  
18 tion and expansion of small business concerns; and

19 (3) includes any recommendations by the Corporation for the pro-  
20 motion of small business concerns owned and controlled by veterans.

21 **§ 275115. Relief from time limitations**

22 (a) IN GENERAL.—Any time limitation on any qualification, certification,  
23 or period of participation imposed under this subtitle or subtitle I on any  
24 program that is available to small business concerns shall be extended for  
25 a small business concern that—

26 (1) is owned and controlled by—

27 (A) a veteran who was called or ordered to active duty on or  
28 after September 11, 2001, under a provision of law specified in  
29 section 101(a)(13)(B) of title 10; or

30 (B) a service-disabled veteran who became such a veteran due  
31 to an injury or illness incurred or aggravated in the active mili-  
32 tary, naval, or air service during a period of active duty pursuant  
33 to a call or order to active duty on or after September 11, 2001,  
34 under a provision of law specified in section 101(a)(13)(B) of title  
35 10; and

36 (2) was subject to the time limitation during that period of active  
37 duty.

38 (b) DURATION.—On submission of proper documentation to the Adminis-  
39 trator, the extension of a time limitation under subsection (a) shall be equal  
40 to the period of time that the veteran who owned or controlled a small busi-  
41 ness concern was on active duty as described in subsection (a).

1 (c) EXCEPTION FOR PROGRAMS SUBJECT TO FEDERAL CREDIT REFORM  
 2 ACT OF 1990.—Subsections (a) and (b) do not apply to any program subject  
 3 to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

4 **Division M—International Trade**  
 5 **Chapter 277—International Trade**

Sec.

- 277101. Definitions.
- 277102. Trade distribution network.
- 277103. Promotion of sales opportunities.
- 277104. Export financing programs.
- 277105. Trade remedies.
- 277106. Discharge of international trade responsibilities.
- 277107. Export and trade counseling.
- 277108. Performance measures.
- 277109. Export assistance centers.
- 277110. State trade and export program.

6 **§ 277101. Definitions**

7 In this chapter:

- 8 (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Adminis-  
 9 trator” means the Associate Administrator for International Trade.
- 10 (2) OFFICE.—The term “Office” means the Office of International  
 11 Trade established under section 103.109 of this title.
- 12 (3) RURAL SMALL BUSINESS CONCERN.—The term “rural small  
 13 business concern” means a small business concern located in a rural  
 14 area (as defined in section 1393(a)(2) of the Internal Revenue Code  
 15 of 1986 (26 U.S.C. 1393(a)(2))).

16 **§ 277102. Trade distribution network**

17 The Associate Administrator, working in close cooperation with the Sec-  
 18 retary of Commerce, the United States Trade Representative, the Secretary  
 19 of Agriculture, the Secretary of State, the President of the Export-Import  
 20 Bank of the United States, the President of the Overseas Private Invest-  
 21 ment Corporation, the Director of the United States Trade and Develop-  
 22 ment Agency, and other Federal agencies, small business development cen-  
 23 ters engaged in export promotion efforts, export assistance centers, SBA re-  
 24 gional offices, SBA district offices, the small business community, and State  
 25 and local export promotion programs, shall—

- 26 (1) maintain a distribution network, using SBA regional offices and  
 27 SBA district offices, the small business development center network,  
 28 networks of women’s business centers, SCORE, and export assistance  
 29 centers, for programs relating to—  
 30 (A) trade promotion;  
 31 (B) trade finance;  
 32 (C) trade adjustment assistance;  
 33 (D) trade remedy assistance; and  
 34 (E) trade data collection;

(2) aggressively market the programs described in paragraph (1) and disseminate information, including computerized marketing data, to small business concerns on—

(A) exporting trends;

(B) market-specific growth;

(C) industry trends; and

(D) international prospects for exports;

(3) promote export assistance programs through the SBA district offices and SBA regional offices, the small business development center network, export assistance centers, the network of women's business centers, SCORE chapters, State and local export promotion programs, and partners in the private sector; and

(4) give preference in hiring or approving the transfer of any employee into the Office or to a position described in section 277.103(b)(9) of this title to otherwise qualified applicants who are fluent in a language in addition to English, to—

(A) accompany small business concerns on foreign trade missions; and

(B) translate documents, interpret conversations, and facilitate multilingual transactions, including by providing referral lists for translation services, if required.

#### **§ 277.103. Promotion of sales opportunities**

(a) IN GENERAL.—The Associate Administrator shall promote sales opportunities for small business goods and services abroad.

(b) ACTIVITIES.—To accomplish the objective stated in subsection (a), the Associate Administrator shall—

(1) establish annual goals for the Office relating to—

(A) enhancing the exporting capability of small business concerns;

(B) facilitating technology transfers;

(C) enhancing programs and services to assist small business concerns to compete effectively and efficiently in foreign markets;

(D) increasing the ability of small business concerns to access capital; and

(E) disseminating information concerning Federal, State, and private programs and initiatives;

(2) in cooperation with the Department of Commerce, other Federal agencies, regional and local SBA offices, the small business development center network, and State programs, develop a mechanism for—

(A) identifying subsectors of the small business community with strong export potential;

- 1 (B) identifying areas of demand in foreign markets;
- 2 (C) prescreening foreign buyers for commercial and credit pur-
- 3 poses; and
- 4 (D) assisting in increasing international marketing by dissemi-
- 5 nating relevant information regarding market leads, linking poten-
- 6 tial sellers and buyers, and catalyzing the formation of joint ven-
- 7 tures, where appropriate;
- 8 (3) in cooperation with the Department of Commerce, actively assist
- 9 small business concerns in forming and using export trading compa-
- 10 nies, export management companies and research and development
- 11 pools authorized under division I of subtitle II;
- 12 (4) work in conjunction with other Federal agencies, SBA regional
- 13 offices, SBA district offices, the small business development center net-
- 14 work, and the private sector to identify and publicize translation serv-
- 15 ices, including those available through colleges and universities partici-
- 16 pating in the small business development center program;
- 17 (5) work closely with the Department of Commerce and other rel-
- 18 evant Federal agencies to—
- 19 (A)(i) collect, analyze and periodically update relevant data re-
- 20 garding the small business share of United States exports and the
- 21 nature of State exports (including the production of Gross State
- 22 Product figures); and
- 23 (ii) disseminate those data to the public and to Congress;
- 24 (B) make recommendations to the Secretary of Commerce and
- 25 to Congress regarding revision of the North American Industry
- 26 Classification System codes to encompass industries currently
- 27 overlooked and to create North American Industry Classification
- 28 System codes for export trading companies and export manage-
- 29 ment companies;
- 30 (C) improve the utility and accessibility of existing export pro-
- 31 motion programs for small business concerns; and
- 32 (D) increase the accessibility of the Export Trading Company
- 33 contact facilitation service of the Department of Commerce;
- 34 (6) make available to the small business community information re-
- 35 garding conferences on exporting and international trade sponsored by
- 36 the public and private sectors;
- 37 (7) provide small business concerns with access to up to date and
- 38 complete export information by—
- 39 (A) making available, at SBA regional offices and SBA district
- 40 offices through cooperation with the Department of Commerce, ex-

port information, including the worldwide information and trade system and world trade data reports;

(B) maintaining a list of financial institutions that finance export operations;

(C) maintaining a directory of all Federal, regional, State and private sector programs that provide export information and assistance to small business concerns; and

(D) preparing and publishing such reports as the Office determines to be necessary concerning market conditions, sources of financing, export promotion programs, and other information pertaining to the needs of exporting small business concerns so as to ensure that the maximum information is made available to small business concerns in a readily usable form;

(8) in cooperation with the Department of Commerce, encourage greater participation by small business concerns in trade fairs, shows, missions, and other domestic and overseas export development activities of the Department of Commerce;

(9) facilitate decentralized delivery of export information and assistance to small business concerns by assigning primary responsibility for export development to 1 individual in each SBA district office and providing each SBA regional office with a full-time export development specialist, who shall—

(A) assist small business concerns in obtaining export information and assistance from other Federal agencies;

(B) maintain a directory of all programs that provide export information and assistance to small business concerns in the region;

(C) encourage financial institutions to develop and expand programs for export financing;

(D) provide advice to SBA personnel involved in making loans, loan guarantees, and extensions and revolving lines of credit and providing other forms of assistance to small business concerns engaged in exporting;

(E) within 180 days after being appointed as an export development specialist, participate in a training program designed by the Administrator, in conjunction with the Department of Commerce and other Federal agencies, to study export programs and to examine the needs of small business concerns for export information and assistance;

(F) participate, jointly with employees of the Office, in an annual training program that focuses on current small business needs for exporting; and



1 (G) develop and conduct training programs for exporters and  
2 lenders, in cooperation with the export assistance centers, the De-  
3 partment of Commerce, the Department of Agriculture, small  
4 business development centers, women's business centers, the Ex-  
5 port-Import Bank of the United States, the Overseas Private In-  
6 vestment Corporation, and other Federal agencies;

7 (10) make available on the SBA website the name and contact infor-  
8 mation of each individual described in paragraph (9);

9 (11) carry out a nationwide marketing effort using technology, online  
10 resources, training, and other strategies to promote exporting as a  
11 business development opportunity for small business concerns;

12 (12) disseminate information to the small business community  
13 through SBA regional offices and SBA district offices, the small busi-  
14 ness development center network, export assistance centers, the net-  
15 work of women's business centers, SCORE chapters, State and local  
16 export promotion programs, and partners in the private sector regard-  
17 ing exporting trends, market-specific growth, industry trends, and pros-  
18 pects for exporting; and

19 (13) establish and carry out training programs for the staff of SBA  
20 regional offices and SBA district offices and resource partners of SBA  
21 on export promotion and the provision of assistance relating to exports.

22 **§ 277104. Export financing programs**

23 (a) IN GENERAL.—The Associate Administrator shall work in cooperation  
24 with the Export-Import Bank of the United States, the Department of Com-  
25 merce, other Federal agencies, and the States to develop a program through  
26 which export specialists in SBA regional offices, regional and local loan offi-  
27 cers, and small business development center personnel can facilitate the ac-  
28 cess of small business concerns to—

29 (1) relevant export financing programs of the Export-Import Bank  
30 of the United States; and

31 (2) export and pre-export financing programs available from the Ad-  
32 ministrator and the private sector.

33 (b) TRADE FINANCE SPECIALISTS.—To accomplish the goal established  
34 under subsection (a), the Associate Administrator shall—

35 (1) designate at least 1 individual within SBA as a trade finance  
36 specialist to oversee international loan programs and assist SBA em-  
37 ployees with trade finance issues; and

38 (2) work in cooperation with the Export-Import Bank of the United  
39 States and the small business community, including small business  
40 trade associations, to—

(A) aggressively market existing SBA export financing and pre-export financing programs;

(B) identify financing available under various programs of the Export-Import Bank of the United States, and aggressively market those programs to small business concerns;

(C) assist in the development of financial intermediaries and facilitate the access of those intermediaries to existing financing programs;

(D) promote greater participation by private financial institutions, particularly institutions already participating in loan programs under this subtitle, in export finance; and

(E) provide for the participation of appropriate SBA personnel in training programs conducted by the Export-Import Bank of the United States.

#### **§ 277105. Trade remedies**

The Associate Administrator shall—

(1) work in cooperation with other Federal agencies and the private sector to counsel small business concerns with respect to initiating and participating in any proceedings relating to the administration of the United States trade laws; and

(2) work with the Department of Commerce, the Office of the United States Trade Representative, and the International Trade Commission to increase access to trade remedy proceedings for small business concerns.

#### **§ 277106. Discharge of international trade responsibilities**

The Administrator shall ensure that—

(1) the responsibilities of the Administrator regarding international trade are carried out by the Associate Administrator;

(2) the Associate Administrator has sufficient resources to carry out those responsibilities; and

(3) the Associate Administrator has direct supervision and control over—

(A) the staff of the Office; and

(B) any SBA employee whose principal duty station is an export assistance center, or any successor entity.

#### **§ 277107. Export and trade counseling**

(a) DEFINITIONS.—In this section:

(1) LEAD SMALL BUSINESS DEVELOPMENT CENTER.—The term “lead small business development center” means a small business development center that has received a grant from the Administrator.

1           (2) LEAD WOMEN’S BUSINESS CENTER.—The term “lead women’s  
2           business center” means a women’s business center that has received a  
3           grant from the Administrator.

4           (b) CERTIFICATION PROGRAM.—The Administrator shall establish an ex-  
5           port and trade counseling certification program to certify employees of lead  
6           small business development centers and lead women’s business centers in  
7           providing export assistance to small business concerns.

8           (c) NUMBER OF CERTIFIED EMPLOYEES.—The Administrator shall en-  
9           sure that the number of employees of each lead small business development  
10          center who are certified in providing export assistance is not less than the  
11          lesser of—

12           (1) 5; or

13           (2) 10 percent of the total number of employees of the lead small  
14          business development center.

15          (d) REIMBURSEMENT FOR CERTIFICATION.—

16           (1) IN GENERAL.—Subject to the availability of appropriations, the  
17          Administrator shall reimburse a lead small business development center  
18          or a lead women’s business center for costs relating to the certification  
19          of an employee of the lead small business center or lead women’s busi-  
20          ness center in providing export assistance under the program estab-  
21          lished under subsection (b).

22           (2) LIMITATION.—The total amount reimbursed by the Adminis-  
23          trator under paragraph (1) shall not exceed \$350,000 in any fiscal  
24          year.

25          **§ 277108. Performance measures**

26           (a) IN GENERAL.—The Associate Administrator shall develop perform-  
27          ance measures for SBA to support export growth goals for the activities of  
28          the Office under this chapter that include—

29           (1) the number of small business concerns that—

30                   (A) receive assistance from the Administrator;

31                   (B) had not exported goods or services before receiving the as-  
32                   sistance described in subparagraph (A); and

33                   (C) export goods or services;

34           (2) the number of small business concerns receiving assistance from  
35          the Administrator that export goods or services to a market outside the  
36          United States into which the small business concern did not export be-  
37          fore receiving the assistance;

38           (3) export revenues by small business concerns assisted by programs  
39          of the Administrator;

(4) the number of small business concerns referred to an export assistance center or a small business development center by the staff of the Office;

(5) the number of small business concerns referred to SBA by an export assistance center or a small business development center; and

(6) the number of small business concerns referred to the Department of Commerce, the Department of Agriculture, the Department of State, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the United States Trade and Development Agency by the staff of the Office, an export assistance center, or a small business development center.

(b) **JOINT PERFORMANCE MEASURES.**—The Associate Administrator shall develop joint performance measures for SBA district offices and export assistance centers that include the number of export loans made under—

(1) section 205110 of this title;

(2) the export working capital program;

(3) the preferred lenders program; and

(4) the export express program.

(c) **CONSISTENCY OF TRACKING.**—The Associate Administrator, in coordination with the Federal agencies that are represented on the Trade Promotion Coordinating Committee established under section 2312 of the Export Enhancement Act of 1988 (15 U.S.C. 4727) and the small business development center network, shall develop a system to track exports by small business concerns, including information relating to the performance measures developed under subsection (a), that is consistent with systems used by the Federal agencies and the network.

## **§ 277109. Export assistance centers**

(a) **MINIMUM NUMBER OF EXPORT FINANCE SPECIALISTS.**—

(1) **IN GENERAL.**—The Administrator, in coordination with the Secretary of Commerce, shall ensure that the number of export finance specialists at all times is not less than the number of employees assigned as export finance specialists on January 1, 2003.

(2) **SBA REGIONS.**—The Administrator, in coordination with the Secretary of Commerce, shall ensure that at all times there are not fewer than 3 export finance specialists in each SBA region.

(b) **PLACEMENT OF EXPORT FINANCE SPECIALISTS.**—

(1) **PRIORITY.**—The Administrator shall give priority, to the maximum extent practicable, to placing SBA employees at any export assistance center that—

(A) had an SBA employee assigned to the export assistance center before January 2003; and

1 (B) has not had an SBA employee assigned to the export assist-  
2 ance center during the period beginning January 2003 and ending  
3 on September 27, 2010, through either retirement or reassign-  
4 ment.

5 (2) NEEDS OF EXPORTERS.—The Administrator shall, to the maxi-  
6 mum extent practicable, strategically assign SBA employees to export  
7 assistance centers based on the needs of exporters.

8 (3) RULE OF CONSTRUCTION.—Nothing in this section shall be con-  
9 strued to require the Administrator to reassign or remove an export fi-  
10 nance specialist who was assigned to an export assistance center on  
11 September 27, 2010.

12 (c) GOALS.—The Associate Administrator shall work with the Depart-  
13 ment of Commerce, the Export-Import Bank of the United States, and the  
14 Overseas Private Investment Corporation to establish shared annual goals  
15 for the export assistance centers.

16 (d) OVERSIGHT.—The Associate Administrator shall designate an individ-  
17 ual within SBA to oversee all activities conducted by SBA employees as-  
18 signed to export assistance centers.

19 **§ 277110. State trade and export program**

20 (a) DEFINITIONS.—In this section:

21 (1) ELIGIBLE SMALL BUSINESS CONCERN.—The term “eligible small  
22 business concern” means a small business concern that—

23 (A) has been in business for not less than the 1-year period end-  
24 ing on the date on which assistance is provided using a grant  
25 under this section;

26 (B) is operating profitably, based on operations in the United  
27 States;

28 (C) has demonstrated understanding of the costs associated  
29 with exporting and doing business with foreign purchasers, includ-  
30 ing the costs of freight forwarding, customs brokers, and packing  
31 and shipping, as determined by the Associate Administrator; and

32 (D) has in effect a strategic plan for exporting.

33 (2) PROGRAM.—The term “program” means the State trade and ex-  
34 port promotion grant program established under subsection (b).

35 (3) STATE.—The term “State” means a State, the District of Co-  
36 lumbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

37 (b) ESTABLISHMENT OF PROGRAM.—The Associate Administrator shall  
38 establish a 3-year trade and export promotion pilot program to be known  
39 as the State trade and export promotion grant program, to make grants to  
40 States to carry out export programs that assist eligible small business con-  
41 cerns in—

- 1 (1) participation in a foreign trade mission;
- 2 (2) a foreign market sales trip;
- 3 (3) a subscription to services provided by the Secretary of Com-
- 4 merce;
- 5 (4) the payment of website translation fees;
- 6 (5) the design of international marketing media;
- 7 (6) a trade show exhibition;
- 8 (7) participation in training workshops; or
- 9 (8) any other export initiative that the Associate Administrator de-
- 10 termines to be appropriate.

11 (c) GRANTS.—

12 (1) JOINT REVIEW.—In carrying out the program, the Associate Ad-  
13 ministrator may make a grant to a State to increase the number of  
14 eligible small business concerns in the State that export or to increase  
15 the value of the exports by eligible small business concerns in the State.

16 (2) CONSIDERATIONS.—In making grants under this section, the As-  
17 sociate Administrator may give priority to an application by a State  
18 that proposes a program that—

19 (A) focuses on eligible small business concerns as part of an ex-  
20 port promotion program;

21 (B) demonstrates success in promoting exports by—

22 (i) small business concerns owned and controlled by socially  
23 and economically disadvantaged individuals;

24 (ii) small business concerns owned or controlled by women;  
25 and

26 (iii) rural small business concerns;

27 (C) promotes exports from a State that is not 1 of the 10  
28 States with the highest percentage of exporters that are small  
29 business concerns, based on the latest data available from the Sec-  
30 retary of Commerce; and

31 (D) promotes new-to-market export opportunities to the Peo-  
32 ple's Republic of China for eligible small business concerns in the  
33 United States.

34 (3) LIMITATIONS.—

35 (A) SINGLE APPLICATION.—A State may not submit more than  
36 1 application for a grant under the program in any fiscal year.

37 (B) PROPORTION OF AMOUNTS.—The total value of grants  
38 under the program made during a fiscal year to the 10 States with  
39 the highest number of exporters that are small business concerns,  
40 based on the latest data available from the Secretary of Com-

1           merce, shall be not more than 40 percent of the amounts appro-  
2           priated for the program for that fiscal year.

3           (4) APPLICATION.—A State desiring a grant under the program  
4           shall submit an application at such time, in such manner, and accom-  
5           panied by such information as the Associate Administrator may estab-  
6           lish.

7           (d) COMPETITIVE BASIS.—The Associate Administrator shall award  
8           grants under the program on a competitive basis.

9           (e) FEDERAL SHARE.—The Federal share of the cost of an export pro-  
10          gram carried out using a grant under the program shall be—

11          (1) for a State that has a high export volume, as determined by the  
12          Associate Administrator, not more than 65 percent; and

13          (2) for a State that does not have a high export volume, as deter-  
14          mined by the Associate Administrator, not more than 75 percent.

15          (f) NON-FEDERAL SHARE.—The non-Federal share of the cost of an ex-  
16          port program carried using a grant under the program shall be comprised  
17          of not less than 50 percent cash and not more than 50 percent of indirect  
18          costs and in-kind contributions, except that no such costs or contributions  
19          may be derived from funds from any other Federal program.

20          (g) REPORTS.—

21          (1) INITIAL REPORT.—The Associate Administrator shall submit to  
22          the Committee on Small Business and Entrepreneurship of the Senate  
23          and the Committee on Small Business of the House of Representatives  
24          a report that includes—

25                  (A) a description of the structure of and procedures for the pro-  
26                  gram;

27                  (B) a management plan for the program; and

28                  (C) a description of the merit-based review process to be used  
29                  in the program.

30          (2) ANNUAL REPORTS.—The Associate Administrator shall annually  
31          submit to the Committee on Small Business and Entrepreneurship of  
32          the Senate and the Committee on Small Business of the House of Rep-  
33          resentatives a report regarding the program that includes—

34                  (A) the number and amount of grants made under the program  
35                  during the preceding year;

36                  (B) a list of the States that received a grant under the program  
37                  during the preceding year, including the activities being performed  
38                  with the grant funds; and

39                  (C) the effect of each grant on exports by eligible small business  
40                  concerns in each State that received a grant.

41          (h) REVIEW BY INSPECTOR GENERAL.—

1 (1) IN GENERAL.—The Inspector General of SBA shall conduct a re-  
2 view of—

3 (A) the extent to which recipients of grants under the program  
4 are measuring the performance of the activities being conducted  
5 and the results of the measurements; and

6 (B) the overall management and effectiveness of the program.

7 (2) REPORT.—Not later than September 30, 2012, the Inspector  
8 General of SBA shall submit to the Committee on Small Business and  
9 Entrepreneurship of the Senate and the Committee on Small Business  
10 of the House of Representatives a report regarding the review con-  
11 ducted under paragraph (1).

12 (i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-  
13 propriated to carry out the program \$30,000,000 for each of fiscal years  
14 2011, 2012, and 2013.

15 (j) TERMINATION.—The authority to carry out the program shall termi-  
16 nate 3 years after the date on which the Associate Administrator establishes  
17 the program.

## 18 Divisions N Through Y—Reserved

### 19 Chapter 291—Miscellaneous

Sec.

291101. Management assistance for small business concerns affected by military operations.

291102. Business grants and cooperative agreements.

291103. Voluntary agreements and programs.

291104. Paul D. Coverdell drug-free workplace program.

#### 20 § 291101. Management assistance for small business con- 21 cerns affected by military operations

22 (a) DEFINITION OF PERIOD OF MILITARY CONFLICT.—In this section,  
23 the term “period of military conflict” means—

24 (1) a period of war declared by Congress;

25 (2) a period of national emergency declared by Congress or by the  
26 President; or

27 (3) a period of a contingency operation (as defined in section 101(a)  
28 of title 10).

29 (b) ASSISTANCE.—The Administrator shall use, as appropriate, the entre-  
30 preneurial development and management assistance programs of SBA, in-  
31 cluding programs involving State or private sector partners, to provide busi-  
32 ness counseling and training to any small business concern adversely af-  
33 fected by the deployment of units of the Armed Forces of the United States  
34 in support of a period of military conflict.



1    **§ 291102. Business grants and cooperative agreements**

2       (a) IN GENERAL.—The Administrator may make grants to and enter into  
3 cooperative agreements with a coalition of private or public entities (or com-  
4 bination of private and public entities)—

5           (1) to expand business-to-business relationships between small busi-  
6 ness concerns and large business concerns; and

7           (2) to provide businesses, directly or indirectly, with online informa-  
8 tion and a database of companies that are interested in mentor-protégé  
9 programs or community-based, statewide, or local business development  
10 programs.

11       (b) MATCHING REQUIREMENT.—The Administrator may make a grant to  
12 a coalition of private entities under subsection (a) only if the coalition pro-  
13 vides for activities described in paragraph (1) or (2) of subsection (a) in  
14 an amount (in kind or in cash) equal to the grant amount.

15    **§ 291103. Voluntary agreements and programs**

16       (a) CONSULTATION.—The President may consult with representatives of  
17 small business concerns with a view to encouraging the making by small  
18 business concerns with the approval of the President of voluntary agree-  
19 ments and programs to further the objectives of this subtitle.

20       (b) EXEMPTION FROM CERTAIN LAWS.—

21           (1) IN GENERAL.—No act or omission to act pursuant to this sub-  
22 title that occurs while this subtitle is in effect, if requested by the  
23 President pursuant to a voluntary agreement or program approved  
24 under subsection (a) and determined by the President to be in the pub-  
25 lic interest as contributing to the national defense, shall be construed  
26 to be within the prohibitions of the antitrust laws or the Federal Trade  
27 Commission Act (15 U.S.C. 41 et seq.).

28           (2) REQUESTS.—A copy of a request intended to be within the cov-  
29 erage of this section, and any modification or withdrawal of such a re-  
30 quest—

31               (A) shall be furnished to the Attorney General and the Chair-  
32 man of the Federal Trade Commission when made; and

33               (B) shall be published in the Federal Register unless publication  
34 of the request would, in the opinion of the President, endanger the  
35 national security.

36       (c) DELEGATION OF AUTHORITY.—The authority granted in subsection  
37 (b) shall be delegated only—

38           (1) to an official who for the purpose of the delegation shall be re-  
39 quired to be appointed by the President by and with the advice and  
40 consent of the Senate;

1           (2) on the condition that the official consult with the Attorney Gen-  
2           eral and the Chairman of the Federal Trade Commission not less than  
3           10 days before making any request or finding under subsection (b);  
4           and

5           (3) on the condition that the official obtain the approval of the At-  
6           torney General to any request under subsection (b) before making the  
7           request.

8           (d) WITHDRAWAL OF REQUEST OR FINDING BY THE PRESIDENT OR OF  
9           APPROVAL BY THE ATTORNEY GENERAL.—On withdrawal of any request  
10          or finding under this section, or on withdrawal by the Attorney General of  
11          approval of the voluntary agreement or program on which the request or  
12          finding is based, this section shall not apply to any subsequent act, or omis-  
13          sion to act, by reason of the finding or request.

14       **§ 291104. Paul D. Coverdell drug-free workplace program**

15       (a) DEFINITIONS.—In this section:

16           (1) DRUG-FREE WORKPLACE PROGRAM.—The term “drug-free work-  
17          place program” means a program that includes—

18               (A) a written policy, including a clear statement of—

19                   (i) expectations for workplace behavior;

20                   (ii) prohibitions against reporting to work or working under  
21                  the influence of illegal drugs or alcohol;

22                   (iii) prohibitions against the use or possession of illegal  
23                  drugs in the workplace; and

24                   (iv) the consequences of violating those expectations and  
25                  prohibitions;

26               (B)(i) drug and alcohol abuse prevention training for a total of  
27                  not less than 2 hours for each employee; and

28               (ii) additional voluntary drug and alcohol abuse prevention  
29                  training for employees who are parents;

30               (C)(i) testing of employees of a small business concern for ille-  
31                  gal drugs, with analysis conducted by a drug testing laboratory  
32                  certified by the Substance Abuse and Mental Health Services Ad-  
33                  ministration, or approved by the College of American Pathologists  
34                  for forensic drug testing; and

35               (ii) a review of each positive test result by a medical review offi-  
36                  cer who is not—

37                   (I) an employee of that small business concern; or

38                   (II) an employee or agent of, or any person having a finan-  
39                  cial interest in, the laboratory for which the illegal drug test  
40                  results are reviewed;

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1 (D) employee access to an employee assistance program, includ-  
2 ing confidential assessment, referral, and short-term problem reso-  
3 lution; and

4 (E) continuing alcohol and drug abuse prevention education.

5 (2) ELIGIBLE INTERMEDIARY.—The term “eligible intermediary”  
6 means an organization—

7 (A) that has not less than 2 years of experience in carrying out  
8 drug-free workplace programs;

9 (B) that has a drug-free workplace policy in effect;

10 (C) that is located in a State, the District of Columbia, or a  
11 territory of the United States; and

12 (D)(i) the purpose of which is—

13 (I) to develop comprehensive drug-free workplace programs  
14 or to supply drug-free workplace services; or

15 (II) to provide other forms of assistance and services to  
16 small business concerns; or

17 (ii) that is eligible to receive a grant under chapter 2 of the Na-  
18 tional Narcotics Leadership Act of 1988 (21 U.S.C. 1521 et seq.).

19 (3) EMPLOYEE.—The term “employee” includes—

20 (A) an applicant for employment;

21 (B) an employee;

22 (C) a supervisor;

23 (D) a manager;

24 (E) an officer of a small business concern who is active in man-  
25 agement of the small business concern; and

26 (F) an owner of a small business concern who is active in man-  
27 agement of the small business concern.

28 (4) MEDICAL REVIEW OFFICER.—The term “medical review officer”  
29 means a licensed physician with knowledge of substance abuse dis-  
30 orders.

31 (b) ESTABLISHMENT.—

32 (1) IN GENERAL.—There is established a drug-free workplace dem-  
33 onstration program, under which the Administrator may make grants  
34 to, or enter into cooperative agreements or contracts with, eligible  
35 intermediaries for the purpose of providing financial and technical as-  
36 sistance to small business concerns seeking to establish a drug-free  
37 workplace program.

38 (2) ADDITIONAL GRANTS FOR TECHNICAL ASSISTANCE.—In addition  
39 to grants under paragraph (1), the Administrator may make grants to,  
40 or enter into cooperative agreements or contracts with, any grantee for  
41 the purpose of providing, in cooperation with 1 or more small business

development centers, technical assistance to small business concerns seeking to establish a drug-free workplace program.

(3) 2-YEAR GRANTS.—A grant made under this subsection shall be for a period of 2 years, subject to an annual performance review by the Administrator.

(c) PROMOTION OF EFFECTIVE PRACTICES OF ELIGIBLE INTER-MEDIARIES.—

(1) TECHNICAL ASSISTANCE AND INFORMATION.—The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and information to each eligible intermediary under subsection (b) regarding the most effective practices in establishing and carrying out drug-free workplace programs.

(2) EVALUATION OF PROGRAM.—

(A) DATA COLLECTION AND ANALYSIS.—

(i) IN GENERAL.—An eligible intermediary receiving a grant under this section shall establish a system to collect and analyze information regarding the effectiveness of drug-free workplace programs established with assistance provided under this section through the intermediary, including information regarding any increase or decrease among employees in drug use, awareness of the adverse consequences of drug use, and absenteeism, injury, and disciplinary problems related to drug use.

(ii) REQUIREMENTS.—The system shall conform to such requirements as the Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, may prescribe.

(iii) LIMITATION.—Not more than 5 percent of the amount of a grant made under subsection (b) shall be used by the eligible intermediary to carry out this paragraph.

(B) METHOD OF EVALUATION.—

(i) IN GENERAL.—The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and guidance to each eligible intermediary receiving a grant under subsection (b) regarding the collection and analysis of information to evaluate the effectiveness of drug-free workplace programs established with assistance provided under this section, including the information referred to in paragraph (1).

- 1 (ii) FORMS OF ASSISTANCE.—Assistance under clause (i)  
 2 shall include—  
 3 (I) the identification of additional information suitable  
 4 for measuring the benefits of drug-free workplace pro-  
 5 grams to the small business concern and to the small  
 6 business concern’s employees; and  
 7 (II) the identification of methods suitable for analyz-  
 8 ing such information.
- 9 (d) CONTRACT AUTHORITY.—In carrying out this section, the Adminis-  
 10 trator may—  
 11 (1) contract with public and private entities to provide assistance re-  
 12 lated to carrying out the program under this section; and  
 13 (2) compensate those entities for provision of that assistance.
- 14 (e) EFFECT OF SECTION.—Nothing in this section requires an employer  
 15 that attends a program offered by an eligible intermediary to contract for  
 16 any service offered by the eligible intermediary.

17 **Subtitle III—Investment Division**  
 18 **Division A—General Provisions**  
 19 **Chapter 301—General Provisions**

Sec.

301101. Definitions.

301102. Implementation of subtitle.

20 **§ 301101. Definitions**

21 In this subtitle:

- 22 (1) 3D PARTY DEBT.—The term “3d party debt” means any indebt-  
 23 edness for borrowed money, other than indebtedness owed to the Ad-  
 24 ministrator.
- 25 (2) ARTICLES.—The term “articles”—  
 26 (A) with respect to an incorporated body, means the articles of  
 27 incorporation if the incorporated body; and  
 28 (B) with respect to any other business entity, means the func-  
 29 tional equivalent of the articles of incorporation of an incorporated  
 30 body or other similar documents specified by the Administrator.
- 31 (3) EMPLOYEE WELFARE BENEFIT PLAN.—  
 32 (A) IN GENERAL.—The term “employee welfare benefit plan”  
 33 has the meaning given the term in section 3 of the Employee Re-  
 34 tirement Income Security Act of 1974 (29 U.S.C. 1002).  
 35 (B) INCLUSIONS.—The term “employee welfare benefit plan”  
 36 includes any similar plan not covered by the Employee Retirement  
 37 Income Security Act of 1974 (29 U.S.C. 1001 et seq.) that has  
 38 been established and that is maintained by the Federal Govern-

1           ment or any State or political subdivision, or any agency or instru-  
2           mentality thereof, for the benefit of employees.

3           (4) ENERGY SAVING DEBENTURE.—The term “energy saving deben-  
4           ture” means a deferred interest debenture that—

5                 (A) is issued at a discount;

6                 (B) has a 5-year maturity or a 10-year maturity;

7                 (C) requires no interest payment or annual charge for the 1st  
8                 5 years;

9                 (D) is restricted to energy saving qualified investments; and

10                (E) is issued at no cost (as defined in section 502 of the Credit  
11           Reform Act of 1990 (2 U.S.C. 661a)) with respect to purchasing  
12           and guaranteeing the debenture.

13           (5) ENERGY SAVING QUALIFIED INVESTMENT.—The term “energy  
14           saving qualified investment” means an investment in a small business  
15           concern that is primarily engaged in researching, manufacturing, devel-  
16           oping, or providing products, goods, or services that reduce the use or  
17           consumption of nonrenewable energy resources.

18           (6) LEVERAGE.—The term “leverage” includes—

19                 (A) a debenture purchased or guaranteed by the Administrator;

20                 (B) a participating security purchased or guaranteed by the Ad-  
21                 ministrator; and

22                 (C) a preferred security outstanding as of October 1, 1995.

23           (7) LICENSE.—The term “license” means a license to operate as a  
24           small business investment company issued by the Administrator to a  
25           company under section 303102 of this title.

26           (8) LICENSEE.—

27                 (A) IN GENERAL.—The term “licensee” means a company that  
28                 is issued a license.

29                 (B) INCLUSION.—The term “licensee” includes a specialized  
30                 small business investment company.

31           (9) LIMITED LIABILITY COMPANY.—The term “limited liability com-  
32           pany” means a business entity that is organized and operating in ac-  
33           cordance with a State limited liability company statute approved by the  
34           Administrator.

35           (10) LONG-TERM.—The term “long-term”, used in connection with  
36           equity capital or loan funds invested in a small business concern or  
37           smaller enterprise, means a period of time of not less than 1 year.

38           (11) LOW-INCOME GEOGRAPHIC AREA.—The term “low-income geo-  
39           graphic area” means—

40                 (A) a population census tract (or in the case of an area that  
41                 is not tracted for population census tracts, the equivalent county

1 division, as defined by the Bureau of the Census of the Depart-  
2 ment of Commerce for purposes of defining poverty areas), if—

3 (i) the poverty rate for the population census tract is not  
4 less than 20 percent;

5 (ii)(I) in the case of a population census tract that is lo-  
6 cated within a metropolitan area, 50 percent or more of the  
7 households in the population census tract have an income  
8 equal to less than 60 percent of the area median gross in-  
9 come; or

10 (II) in the case of a population census tract that is not lo-  
11 cated within a metropolitan area, the median household in-  
12 come for the census tract does not exceed 80 percent of the  
13 statewide median household income; or

14 (iii) as determined by the Administrator based on objective  
15 criteria, a substantial population of low-income individuals re-  
16 side, an inadequate access to investment capital exists, or  
17 other indications of economic distress exist in the population  
18 census tract; or

19 (B) an area located within—

20 (i) a HUBZone;

21 (ii) an urban empowerment zone or urban enterprise com-  
22 munity (as designated by the Secretary of Housing and  
23 Urban Development); or

24 (iii) a rural empowerment zone or rural enterprise commu-  
25 nity (as designated by the Secretary of Agriculture).

26 (12) MANAGEMENT OFFICIAL.—The term “management official”  
27 means an officer, director, general partner, manager, employee, agent,  
28 or other participant in the management or conduct of the affairs of a  
29 licensee.

30 (13) MEMBER.—The term “member”, with respect to a licensee that  
31 is a limited liability company, means—

32 (A) a holder of an ownership interest in the limited liability  
33 company; or

34 (B) a person otherwise admitted to membership in the limited  
35 liability company.

36 (14) PARTICIPATING SECURITY.—The term “participating security”  
37 includes—

38 (A) preferred stock, a preferred limited partnership interest, or  
39 a similar instrument; and

40 (B) a debenture under the terms of which interest is payable  
41 only to the extent of earnings.

1           (15) PENSION PLAN.—

2           (A) IN GENERAL.—The term “pension plan” has the meaning  
3           given the term in section 3 of the Employee Retirement Income  
4           Security Act of 1974 (29 U.S.C. 1002).

5           (B) INCLUSIONS.—The term “pension plan” includes—

6                 (i) a public or private pension or retirement plan subject  
7                 to the Employee Retirement Income Security Act of 1974 (29  
8                 U.S.C. 1001 et seq.); and

9                 (ii) any similar plan not covered by that Act that is estab-  
10                lished and maintained by the Federal Government or any  
11                State or political subdivision, or any agency or instrumental-  
12                ity thereof, for the benefit of employees.

13          (16) PRIVATE CAPITAL.—

14          (A) IN GENERAL.—The term “private capital” means the sum  
15          of—

16                (i)(I) the paid-in capital and paid-in surplus of a corporate  
17                licensee;

18                (II) the contributed capital of the partners of a partnership  
19                licensee; or

20                (III) the equity investment of the members of a limited li-  
21                ability company licensee; and

22                (ii) subject to subparagraph (B), unfunded binding com-  
23                mitments, from investors that meet criteria established by the  
24                Administrator, to contribute capital to the licensee.

25          (B) LIMITATION.—An unfunded commitment described in sub-  
26          paragraph (A)(ii) may be counted as private capital for purposes  
27          of approval by the Administrator of a request for leverage, but le-  
28          verage shall not be funded based on such a commitment.

29          (C) EXCLUSIONS.—The term “private capital” does not in-  
30          clude—

31                (i) funds borrowed by a licensee from any source;

32                (ii) funds obtained through the issuance of leverage; or

33                (iii) funds obtained directly or indirectly from a Federal,  
34                State, or local government, or any government agency or in-  
35                strumentality, except for—

36                    (I) funds obtained from the business revenues (exclud-  
37                    ing any governmental appropriation) of a federally char-  
38                    tered or government-sponsored corporation established  
39                    before October 1, 1987;

40                    (II) funds invested by an employee welfare benefit  
41                    plan or pension plan; and



(III) qualified nonprivate funds (if the investors of the qualified nonprivate funds do not control, directly or indirectly, the management, board of directors, general partners, or members of the licensee).

(17) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term “qualified HUBZone small business concern” has the meaning given the term in section 101102 of this title, except that the exception stated in paragraph (19)(B) of this section applies.

(18) QUALIFIED NONPRIVATE FUNDS.—The term “qualified nonprivate funds” means—

(A) funds directly or indirectly invested in an applicant or licensee on or before August 16, 1982, by any Federal agency, other than SBA, under a provision of law that explicitly requires the inclusion of such funds in the definition of the term “private capital”;

(B) funds directly or indirectly invested in an applicant or licensee by a Federal agency under a provision of law enacted after September 4, 1992, that explicitly requires the inclusion of those funds in the definition of the term “private capital”; and

(C) funds invested in an applicant or licensee by 1 or more State or local government entities (including any guarantee extended by such an entity) in an aggregate amount that does not exceed 33 percent of the private capital of the applicant or licensee.

(19) SMALL BUSINESS CONCERN.—

(A) IN GENERAL.—The term “small business concern” has the meaning given the term in section 101103 of this title, except as provided in subparagraph (B).

(B) EXCEPTION.—For purposes of this subtitle, in determining whether a business concern is a small business concern—

(i) an investment by a venture capital firm, investment company (including a small business investment company), employee welfare benefit plan, pension plan, trust, foundation, or endowment that is exempt from Federal income taxation—

(I) shall not cause a business concern to be considered not independently owned and operated regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment;

(II) shall be disregarded in determining whether a business concern satisfies size standards established under section 101103 of this title; and

(III) shall be disregarded in determining whether a small business concern is a smaller enterprise; and

(ii) in determining whether a business concern satisfies net income standards established under section 101103 of this title, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

(I) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this subparagraph), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would apply if the business concern were a corporation; and

(II) the net income (so determined) less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would apply if the business concern were a corporation.

(20) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term “small business concern owned and controlled by service-disabled veterans” has the meaning given the term in section 101102 of this title, except that the exception stated in paragraph (19)(B) of this section applies.

(21) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term “small business concern owned and controlled by socially and economically disadvantaged individuals” has the meaning given the term in section 101102 of this title, except that the exception stated in paragraph (19)(B) of this section applies.

(22) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VETERANS.—The term “small business concern owned and controlled by veterans” has the meaning given the term in section 101102 of this title, except that the exception stated in paragraph (19)(B) of this section applies.

1           (23) SMALL BUSINESS INVESTMENT COMPANY.—The term “small  
2 business investment company” means a licensee.

3           (24) SMALLER ENTERPRISE.—

4           (A) IN GENERAL.—The term “smaller enterprise” means a  
5 small business concern that, together with its affiliates—

6           (i) has—

7               (I) a net financial worth of not more than \$6,000,000,  
8 as of the date on which assistance is provided under this  
9 subtitle to that small business concern; and

10               (II) an average net income, for the 2-year period pre-  
11 ceding the date on which assistance is provided under  
12 this subtitle to that small business concern, of not more  
13 than \$2,000,000, after Federal income taxes (excluding  
14 any carryover losses); or

15           (ii) satisfies the North American Industry Classification  
16 System size standards established by the Administrator for  
17 the industry in which the small business concern is primarily  
18 engaged.

19           (B) DETERMINATION OF NET INCOME.—For purposes of sub-  
20 paragraph (A)(i)(II), if a small business concern is not required  
21 by law to pay Federal income tax at the enterprise level, but is  
22 required to pass income through to the shareholders, partners,  
23 beneficiaries, or other equitable owners of the small business con-  
24 cern, the net income of the small business concern shall be deter-  
25 mined by deducting from the gross income of the small business  
26 concern—

27           (i) in the case of a small business concern that is required  
28 by law to pay State (and local, if any) income taxes at the  
29 enterprise level, the amount that is equal to the net income  
30 of the small business concern determined without regard to  
31 this clause, multiplied by the marginal Federal income tax  
32 rate that would apply if the small business concern were a  
33 corporation; or

34           (ii) in the case of a small business concern that is not re-  
35 quired by law to pay State (and local, if any) income taxes  
36 at the enterprise level, the amount that is equal to the sum  
37 of—

38               (I) the net income of the small business concern deter-  
39 mined without regard to this clause, multiplied by the  
40 marginal State income tax rate (or by the combined  
41 State and local income tax rates, as applicable) that

would apply if the small business concern were a corporation; and

(II) the net income of the small business concern determined without regard to this clause, less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would apply if the business concern were a corporation.

(25) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANY.—The term “specialized small business investment company” means a company that—

(A) invests solely in small business concerns that contribute to a well-balanced national economy by facilitating ownership in small business concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages;

(B) is organized or chartered under a State business or non-profit corporations statute or formed as a limited partnership; and

(C) was licensed under subsection (d) of section 301 of the Small Business Act (15 U.S.C. 681(d)), as in effect before September 30, 1996.

(26) STATE.—The term “State” includes a State, District of Columbia, Puerto Rico, and any other territory (including a possession) of the United States.

#### **§ 301102. Implementation of subtitle**

The Administrator—

(1) shall carry out this subtitle so as to improve and stimulate the national economy in general and the small business segment of the economy in particular by establishing a program to stimulate and supplement the flow of private equity capital and long-term loan funds that—

(A) small business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization; and

(B) are not available in adequate supply; and

(2) in doing so—

(A) shall ensure the maximum participation of private financing sources;

(B) shall ensure that any financial assistance provided under this subtitle does not result in a substantial increase of unemployment in any area of the country; and

1 (C) in the award of financial assistance under this subtitle,  
 2 when practicable, shall accord priority to small business concerns  
 3 that lease or purchase equipment and supplies produced in the  
 4 United States and encourage small business concerns that receive  
 5 assistance under this subtitle to continue to lease or purchase  
 6 equipment and supplies produced in the United States.

7 **Division B—Investment Programs**  
 8 **Chapter 303—Small Business Investment**  
 9 **Company Program**

Sec.

- 303101. Requirements for licensing.
- 303102. Licensing procedure.
- 303103. Financial institution investments.
- 303104. Borrowing power.
- 303105. Equity capital for small business concerns.
- 303106. Long-term loans to small business concerns.
- 303107. Limitation on amount of financing.
- 303108. Cooperation with banks and other investors or lenders.
- 303109. Advisory services; Federal Reserve Banks as depositories or fiscal agents; investment of funds.
- 303110. Nonliability of the United States.
- 303111. Certifications of eligibility.
- 303112. Interest rates.
- 303113. Conflicts of interest.
- 303114. Ineligibility of guaranteed obligations for purchase by Federal Financing Bank.
- 303115. Trust certificates.
- 303116. Regulations.
- 303117. Unlawful acts and omissions.
- 303118. Investigations; examinations; valuations.
- 303119. Revocation and suspension of licenses; cease and desist orders.
- 303120. Removal or suspension of, or prohibition of participation by, management officials.
- 303121. Direct civil enforcement actions.
- 303122. Jurisdiction; service of process.

10 **§ 303101. Requirements for licensing**

11 (a) IN GENERAL.—To receive or hold a license to operate as a small busi-  
 12 ness investment company under this chapter, a company shall meet the re-  
 13 quirements of this section.

14 (b) ORGANIZATION.—The company shall be an incorporated body, limited  
 15 liability company, or limited partnership organized and chartered or other-  
 16 wise existing under State law solely for the purpose of performing the func-  
 17 tions and conducting the activities contemplated under this chapter.

18 (c) SUCCESSION.—The company—

19 (1) if it is an incorporated body, shall have succession for a period  
 20 of not less than 30 years unless it is sooner dissolved by its sharehold-  
 21 ers; and

22 (2) if it is a limited partnership, shall have succession for a period  
 23 of not less than 10 years.

24 (d) POWERS.—The company shall possess the powers reasonably nec-  
 25 essary to perform the functions and conducting the activities contemplated  
 26 under this chapter.

1 (e) AREA OF OPERATION.—The area in which the company is to conduct  
2 its operations, and the establishment of branch offices or agencies (if au-  
3 thorized by the articles), shall be subject to the approval of the Adminis-  
4 trator.

5 (f) ARTICLES.—

6 (1) IN GENERAL.—The articles of the company shall specify in gen-  
7 eral terms—

8 (A) the purposes for which the company is formed;

9 (B) the name of the company;

10 (C) the area or areas in which its operations are to be carried  
11 on;

12 (D) the place where its principal office is to be located; and

13 (E) the amount and classes of its shares of capital stock.

14 (2) OTHER PROVISIONS.—The articles of the company may contain  
15 any other provisions not inconsistent with this chapter that the com-  
16 pany may see fit to adopt for the regulation of its business and the  
17 conduct of its affairs.

18 (3) APPROVAL.—The articles of the company and any amendments  
19 to the articles adopted from time to time shall be subject to the ap-  
20 proval of the Administrator.

21 (g) CAPITAL REQUIREMENTS.—

22 (1) IN GENERAL.—Except as provided in paragraph (2), the private  
23 capital of the company shall be not less than—

24 (A) \$5,000,000; or

25 (B) \$10,000,000, with respect to a company that seeks author-  
26 ity to issue participating securities to be purchased or guaranteed  
27 by the Administrator under this chapter.

28 (2) EXCEPTIONS.—

29 (A) NO UNREASONABLE RISK OF DEFAULT OR LOSS.—

30 (i) IN GENERAL.—The Administrator may, on a showing of  
31 special circumstances and good cause, permit the private cap-  
32 ital of a company described in paragraph (1)(B) to be less  
33 than \$10,000,000, but not less than \$5,000,000, if the Ad-  
34 ministrator determines that doing so would not create or  
35 otherwise contribute to an unreasonable risk of default or loss  
36 to the Federal Government.

37 (ii) COMPANIES LICENSED BEFORE SEPTEMBER 30, 1996.—  
38 The Administrator may approve leverage for a licensee li-  
39 censed under subsection (c) or (d) of section 301 of the Small  
40 Business Act (15 U.S.C. 681(c), (d)) before September 30,

1996, that does not meet the requirements of paragraph (1)  
if—

(I) the licensee certifies in writing that not less than  
50 percent of the aggregate dollar amount of its financ-  
ings will be provided to smaller enterprises; and

(II) the Administrator determines that doing so would  
not create or otherwise contribute to an unreasonable  
risk of default or loss to the Federal Government.

(B) VIABLE BUSINESS PLAN AND REASONABLE TIMETABLE.—

(i) IN GENERAL.—Notwithstanding any other provision of  
this chapter, the Administrator may, on a showing of special  
circumstances and good cause, issue a license with respect to  
a company that would otherwise be issued a license, except  
that the company does not satisfy the requirements of para-  
graph (1), if the company—

(I) has private capital of not less than \$3,000,000;  
and

(II) has a viable business plan reasonably projecting  
profitable operations and a reasonable timetable for  
achieving a level of private capital that satisfies the re-  
quirements of paragraph (1).

(ii) LEVERAGE.—A company that is licensed pursuant to  
the exception provided in clause (i) shall not be eligible to re-  
ceive leverage as a licensee until the company satisfies the re-  
quirements of paragraph (1).

(3) ADEQUACY.—In addition to the requirements of paragraph (1),  
the Administrator shall—

(A) determine whether the private capital of the company is  
adequate to ensure a reasonable prospect that the company will be  
operated soundly and profitably and managed actively and pru-  
dently in accordance with its articles;

(B) determine that the company, both prior to licensing and  
prior to approving any request for financing, will be able to make  
periodic payments on any debt of the company that is interest-  
bearing; and

(C) take into consideration—

(i) the income that the company anticipates on its con-  
templated investments;

(ii) the experience of the company's owners and managers;

(iii) the history of the company as an entity, if any; and

(iv) the company's financial resources.

1 (h) DIVERSIFICATION OF OWNERSHIP.—The Administrator shall ensure  
2 that the management of a licensee licensed after September 30, 1996, is  
3 sufficiently diversified from and unaffiliated with the ownership of the li-  
4 censee in a manner that ensures independence and objectivity in the finan-  
5 cial management and oversight of the investments and operations of the li-  
6 censee.

7 **§ 303102. Licensing procedure**

8 (a) SUBMISSION OF APPLICATION.—An applicant for a license to operate  
9 as a small business investment company under this chapter shall submit to  
10 the Administrator an application, in such form and including such docu-  
11 mentation as the Administrator may prescribe.

12 (b) STATUS.—Not later than 90 days after receipt by the Administrator  
13 of an application under this section, the Administrator shall provide the ap-  
14 plicant with a written report detailing the status of the application and any  
15 requirements remaining for completion of the application.

16 (c) APPROVAL OR DISAPPROVAL.—Within a reasonable time after receiv-  
17 ing a completed application submitted in accordance with this section (in-  
18 cluding such requirements as the Administrator may prescribe by regula-  
19 tion), the Administrator shall—

20 (1) approve the application and issue a license to the applicant if the  
21 requirements of this section are satisfied; or

22 (2) disapprove the application and notify the applicant in writing of  
23 the disapproval.

24 (d) MATTERS TO BE CONSIDERED.—In reviewing and processing an ap-  
25 plication under this section, the Administrator—

26 (1) shall determine whether—

27 (A) the applicant meets the requirements of subsections (g) and  
28 (h) of section 303101 of this title; and

29 (B) the management of the applicant is qualified and has the  
30 knowledge, experience, and capability necessary to comply with  
31 this chapter;

32 (2) shall take into consideration—

33 (A) the need for and availability of financing for small business  
34 concerns in the geographic area in which the applicant is to com-  
35 mence business;

36 (B) the general business reputation of the owners and manage-  
37 ment of the applicant; and

38 (C) the probability of successful operations of the applicant, in-  
39 cluding adequate profitability and financial soundness; and

40 (3) shall not take into consideration any projected shortage or un-  
41 availability of leverage.



1 (e) FEES.—

2 (1) IN GENERAL.—The Administrator may prescribe fees to be paid  
3 by an applicant for a license.

4 (2) USE OF AMOUNTS.—Fees collected under this subsection—

5 (A) shall be deposited in the account for salaries and expenses  
6 of SBA; and

7 (B) are authorized to be appropriated solely to cover the costs  
8 of licensing examinations.

9 **§ 303103. Financial institution investments**

10 (a) CERTAIN BANKS.—Notwithstanding section 23A of the Federal Re-  
11 serve Act (12 U.S.C. 371c), a national bank, or a member bank of the Fed-  
12 eral Reserve System or nonmember insured bank to the extent permitted  
13 under applicable State law, may invest in 1 or more licensees, or in an en-  
14 tity established to invest solely in licensees, except that in no event shall  
15 the total amount of such investments of any such bank exceed 5 percent  
16 of the capital and surplus of the bank.

17 (b) FEDERAL SAVINGS ASSOCIATIONS.—Notwithstanding any other provi-  
18 sion of law, a Federal savings association may invest in 1 or more licensees,  
19 or in an entity established to invest solely in licensees, except that in no  
20 event shall the total amount of such investments by a Federal savings asso-  
21 ciation exceed 5 percent of the capital and surplus of the Federal savings  
22 association.

23 **§ 303104. Borrowing power**

24 (a) AUTHORITY TO ISSUE OBLIGATIONS.—A licensee shall have authority  
25 to borrow money and to issue its securities, promissory notes, or other obli-  
26 gations under such general conditions and subject to such limitations and  
27 regulations as the Administrator may prescribe.

28 (b) DEBENTURES AND PARTICIPATING SECURITIES.—

29 (1) AUTHORITY TO PURCHASE OR GUARANTEE.—To encourage the  
30 formation and growth of small business investment companies, the Ad-  
31 ministrator may, when authorized in an appropriation Act, purchase,  
32 or guarantee the timely payment of all principal and interest as sched-  
33 uled on, debentures or participating securities issued by a licensee.

34 (2) TERMS AND CONDITIONS.—A purchase or guarantee under para-  
35 graph (1) may be made on such terms and conditions as the Adminis-  
36 trator considers appropriate, under regulations prescribed by the Ad-  
37 ministrator.

38 (3) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full  
39 faith and credit of the United States is pledged to the payment of all  
40 amounts that may be required to be paid under any guarantee under  
41 this subsection.

1 (4) DEBENTURES.—

2 (A) SUBORDINATION.—A debenture purchased or guaranteed by  
3 the Administrator under this subsection shall be subordinate to  
4 any other debenture bond, promissory note, or other debt or obli-  
5 gation of a licensee, unless the Administrator, in the exercise of  
6 reasonable investment prudence and in consideration of the finan-  
7 cial soundness of the licensee, determines otherwise.

8 (B) TERM; INTEREST.—A debenture purchased or guaranteed  
9 by the Administrator under this subsection—

10 (i) may be issued for a term of not to exceed 15 years; and

11 (ii) shall bear interest at a rate not less than—

12 (I) a rate determined by the Secretary of the Treasury  
13 taking into consideration the current average market  
14 yield on outstanding marketable obligations of the  
15 United States with remaining periods to maturity com-  
16 parable to the average maturities on such debentures,  
17 adjusted to the nearest 0.125 percent; plus

18 (II) in the case of a debenture obligated after Septem-  
19 ber 30, 2001, an additional charge in an amount estab-  
20 lished annually by the Administrator as necessary to re-  
21 duce to zero the cost (as defined in section 502 of the  
22 Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to  
23 the Administrator of purchasing and guaranteeing de-  
24 bentures under this chapter, which amount—

25 (aa) may not exceed 1.38 percent per year; and

26 (bb) which shall be paid to and retained by the  
27 Administrator.

28 (5) OTHER TERMS AND CONDITIONS.—A debenture or participating  
29 security purchased or guaranteed under this subsection shall also con-  
30 tain such other terms as the Administrator may determine.

31 (6) TOTAL AMOUNT.—The total amount of debentures and partici-  
32 pating securities of a licensee that may be guaranteed by the Adminis-  
33 trator and outstanding shall not exceed 300 percent of the private cap-  
34 ital of the licensee.

35 (7) MAXIMUM LEVERAGE.—

36 (A) IN GENERAL.—The maximum amount of outstanding lever-  
37 age made available to any 1 licensee shall not exceed the lesser  
38 of—

39 (i) 300 percent of the licensee's private capital; or

40 (ii) \$150,000,000.

(B) MULTIPLE LICENSES UNDER COMMON CONTROL.—The maximum amount of outstanding leverage made available to 2 or more licensees that are commonly controlled (as determined by the Administrator) and not under capital impairment shall not exceed \$225,000,000.

(C) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—

(i) CALCULATION OF OUTSTANDING LEVERAGE.—In calculating the outstanding leverage of a licensee for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the licensee in a smaller enterprise located in a low-income geographic area, to the extent that the total of such amounts does not exceed 50 percent of the licensee's private capital.

(ii) MAXIMUM LEVERAGE.—

(I) IN GENERAL.—The maximum amount of outstanding leverage made available to—

(aa) any 1 licensee described in subclause (II) shall not exceed the lesser of—

(AA) 300 percent of private capital of the licensee; or

(BB) \$175,000,000; and

(bb) 2 or more licensees described in subclause (II) that are under common control (as determined by the Administrator) shall not exceed \$250,000,000.

(II) LICENSEES.—A licensee referred to in subclause (I) is a company that—

(aa) applies for and receives a license under section 303102 of this title after September 30, 2009; and

(bb) certifies in writing that not less than 50 percent of the dollar amount of investments of the company shall be made in companies that are located in a low-income geographic area.

(D) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—

(i) IN GENERAL.—Subject to clause (ii), in calculating the outstanding leverage of a company for purposes of subparagraph (A), the Administrator shall exclude the amount of the cost basis of any energy saving qualified investment in a

1 smaller enterprise made in fiscal year 2009 or any fiscal year  
2 thereafter by a company licensed in the applicable fiscal year.

3 (ii) LIMITATIONS.—

4 (I) AMOUNT OF EXCLUSION.—The amount excluded  
5 under clause (i) for a company shall not exceed 33 per-  
6 cent of the private capital of the company.

7 (II) MAXIMUM INVESTMENT.—A company shall not  
8 make an energy saving qualified investment in any 1 en-  
9 tity in an amount equal to more than 20 percent of the  
10 private capital of the company.

11 (III) OTHER TERMS.—The exclusion of amounts under  
12 clause (i) shall be subject to such terms as the Adminis-  
13 trator may impose to ensure that there is no cost (as de-  
14 fined in section 502 of the Credit Reform Act of 1990  
15 (2 U.S.C. 661a)) with respect to purchasing or guaran-  
16 teeing any debenture involved.

17 (8) AUTHORITY TO HAVE OUTSTANDING BOTH GUARANTEED DEBEN-  
18 TURES AND GUARANTEED PARTICIPATING SECURITIES.—Subject to the  
19 dollar and percentage limits stated in paragraphs (6) and (7), a li-  
20 censee may issue and have outstanding both guaranteed debentures  
21 and guaranteed participating securities so long as the total amount of  
22 participating securities outstanding does not exceed 200 percent of the  
23 amount of the licensee's private capital.

24 (c) 3D PARTY DEBT.—The Administrator—

25 (1) shall not permit a licensee having outstanding leverage to incur  
26 3d party debt that would create or contribute to an unreasonable risk  
27 of default or loss to the Federal Government; and

28 (2) shall permit a licensee having outstanding leverage to incur 3d  
29 party debt only on such terms and subject to such conditions as the  
30 Administrator may establish by regulation or otherwise.

31 (d) INVESTMENTS IN SMALLER ENTERPRISES.—The Administrator shall  
32 require a licensee, as a condition of approval of an application for leverage,  
33 to certify in writing that not less than 25 percent of the licensee's aggregate  
34 dollar amount of financings shall be provided to smaller enterprises.

35 (e) CAPITAL IMPAIRMENT.—

36 (1) IN GENERAL.—Before approving an application for leverage sub-  
37 mitted by a licensee, the Administrator—

38 (A) shall determine that the private capital of the licensee meets  
39 the requirements of section 303101(g) of this title; and

40 (B) shall determine (taking into account the nature of the as-  
41 sets of the licensee, the amount and terms of any 3d party debt

1           owed by the licensee, and any other factors determined to be rel-  
2           evant by the Administrator) that the private capital of the licensee  
3           has not been impaired to such an extent that the issuance of addi-  
4           tional leverage would create or otherwise contribute to an unrea-  
5           sonable risk of default or loss to the Federal Government.

6           (2) UNIFORM APPLICABILITY.—Any regulation issued by the Admin-  
7           istrator to implement this subsection that applies to any licensee with  
8           outstanding leverage obtained before the effective date of the regulation  
9           shall apply uniformly to all licensees with outstanding leverage obtained  
10          before that effective date.

11       (f) REDEMPTION OR REPURCHASE OF PREFERRED STOCK.—Notwith-  
12       standing any other provision of law—

13           (1) the Administrator may allow the issuer of any preferred stock  
14           sold to the Administrator before November 1, 1989, to redeem or re-  
15           purchase the stock, on payment to the Administrator of an amount less  
16           than the par value of the stock, for a repurchase price determined by  
17           the Administrator after consideration of all relevant factors, includ-  
18           ing—

19                (A) the market value of the stock;

20                (B) the value of benefits provided and anticipated to accrue to  
21                the issuer;

22                (C) the amount of dividends paid, accrued, and anticipated; and

23                (D) the estimate of the Administrator of any anticipated re-  
24                demption; and

25           (2) any amounts received by the Administrator from the repurchase  
26           of preferred stock shall be available solely to provide debenture leverage  
27           to licensees having 50 percent or more in aggregate dollar amount of  
28           their financings invested in smaller enterprises.

29       (g) GUARANTEE OF PAYMENT OF, AND AUTHORITY TO PURCHASE, PAR-  
30       TICIPATING SECURITIES.—

31           (1) DEFINITIONS.—In this subsection:

32                (A) COMBINED CAPITAL.—The term “combined capital” means  
33                the aggregate amount of private capital and outstanding leverage.

34                (B) EQUITY CAPITAL.—

35                    (i) IN GENERAL.—The term “equity capital” means com-  
36                    mon or preferred stock or a similar instrument.

37                    (ii) INCLUSIONS.—The term “equity capital” includes sub-  
38                    ordinated debt that has equity features, is not amortized, and  
39                    provides for interest payments from appropriate sources, as  
40                    determined by the Administrator.

41                (C) MANAGEMENT EXPENSE.—

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(i) IN GENERAL.—The term “management expense” includes—

(I) salaries;

(II) office expenses; and

(III) the costs of travel, business development, office and equipment rental, bookkeeping, and the development, investigation and monitoring of investments.

(ii) EXCLUSIONS.—The term “management expense” does not include—

(I) the cost of services provided by specialized outside consultants, outside lawyers, and outside auditors that perform services not generally expected of a venture capital company; or

(II) the cost of services provided by any affiliate of a licensee that are not part of the normal process of making and monitoring venture capital investments.

(D) MAXIMUM TAX LIABILITY.—The term “maximum tax liability” means the amount of income allocated to each partner, shareholder, or member of a licensee (including an allocation to the Administrator as if the Administrator were a taxpayer) for Federal income tax purposes in the income tax return filed or to be filed by the licensee with respect to the fiscal year of the licensee immediately preceding a distribution described in clause (i) or (ii) of paragraph (10)(A), multiplied by the highest combined marginal Federal and State income tax rates for corporations or individuals, whichever is higher, on each type of income included in the return.

(E) PRIORITIZED PAYMENT.—The term “prioritized payment” includes—

(i) a dividend on stock;

(ii) interest on a debenture described in section 301101(14)(B) of this title; and

(iii) a priority return on a preferred limited partnership interest that is paid only to the extent of earnings.

(F) STATE INCOME TAX.—The term “State income tax”, in reference to the State income tax liability of a licensee, means the income tax of the State in which a licensee’s principal place of business is located.

(2) AUTHORITY.—

(A) IN GENERAL.—To encourage licensees to provide equity capital to small business concerns, the Administrator may guaran-

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1           tee the payment of the redemption price and prioritized payments  
2           on participating securities issued by licensees.

3           (B) PURCHASE BY TRUST OR POOL.—A trust or a pool acting  
4           on behalf of the Administrator may purchase participating securi-  
5           ties guaranteed under subparagraph (A).

6           (3) TERMS AND CONDITIONS.—A guarantee or purchase under para-  
7           graph (2) shall be made on such terms and conditions as the Adminis-  
8           trator shall establish by regulation.

9           (4) REDEMPTION OF PARTICIPATING SECURITIES.—

10           (A) IN GENERAL.—A participating security shall be redeemed  
11           not later than 15 years after its date of issuance for an amount  
12           equal to 100 percent of the original issue price plus the amount  
13           of any accrued prioritized payment.

14           (B) CONTINUED OBLIGATION.—

15           (i) IN GENERAL.—If, at the time at which a participating  
16           security is redeemed, whether as scheduled or in advance, the  
17           issuing licensee—

18               (I) has not paid all accrued prioritized payments in  
19               full as provided in paragraph (5); and

20               (II) has not sold or otherwise disposed of all invest-  
21               ments subject to profit distributions under paragraph  
22               (11);

23           the licensee's obligation to pay accrued and unpaid prioritized  
24           payments shall continue, and payment shall be made from the  
25           realized gain, if any, on the disposition of such investments,  
26           but if on disposition there is no realized gain, the obligation  
27           to pay accrued and unpaid prioritized payments shall be ex-  
28           tinguished.

29           (ii) LIMITATION.—Between the date on which a participat-  
30           ing security is redeemed and the date on which the licensee  
31           has paid all accrued prioritized payments in full and has sold  
32           or otherwise disposed of all investments subject to profit dis-  
33           tributions, the licensee shall not make any in-kind distribu-  
34           tions of such investments unless the licensee pays to the Ad-  
35           ministrator such sums, up to the amount of the unrealized  
36           appreciation on such investments, as are necessary to pay in  
37           full the accrued prioritized payments.

38           (5) PRIORITIZED PAYMENTS.—Prioritized payments on a participat-  
39           ing security shall be preferred and cumulative and payable out of the  
40           retained earnings available for distribution (as defined by the Adminis-  
41           trator) of the issuing licensee at—

(A) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such securities, adjusted to the nearest 0.125 percent; plus

(B) in the case of a participating security obligated after September 30, 2001, an additional charge, in an amount established annually by the Administrator, as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and guaranteeing participating securities under this chapter, which amount may not exceed 1.46 percent per year, and which shall be paid to and retained by the Administrator.

(6) SENIORITY OF PARTICIPATING SECURITIES ON LIQUIDATION OF LICENSEE.—In the event of liquidation of a licensee, a participating security issued by the licensee shall be senior in priority for all purposes to any other equity interest in the licensee without regard to whether the participating security was issued before, on, or after the date on which the other equity interest was issued.

(7) INVESTMENT IN EQUITY CAPITAL.—A licensee that issues a participating security shall commit to invest or shall invest an amount equal to the outstanding face value of the participating security solely in equity capital.

(8) LIMITATION ON AMOUNT OF DEBT.—The only debt (other than leverage obtained under this chapter) that a licensee that issues a participating security may have outstanding shall be temporary debt in an amount that is equal to not more than 50 percent of the amount of private capital of the licensee.

(9) USE OF PROCEEDS TO PAY PRINCIPAL ON DEBENTURES.—The Administrator may permit the proceeds of a participating security issued by a licensee to be used to pay the principal amount due on an outstanding debenture guaranteed by the Administrator if—

(A) the licensee has outstanding equity capital invested in an amount equal to the amount of the debenture being refinanced; and

(B) the Administrator receives profit participation on such terms and conditions as the Administrator may determine, but not to exceed the percentages specified in paragraph (11).

(10) DISTRIBUTIONS; RETURN OF CAPITAL.—

(A) DISTRIBUTIONS TO PARTNERS, SHAREHOLDERS, AND MEMBERS.—



1 (i) ANNUAL DISTRIBUTIONS.—Notwithstanding subpara-  
2 graph (B), if a licensee is operating as a limited partnership  
3 or as a subchapter S corporation or an equivalent pass-  
4 through entity for tax purposes and if there are no accumu-  
5 lated and unpaid prioritized payments, the licensee may make  
6 annual distributions to the partners, shareholders, or mem-  
7 bers in amounts not greater than each partner's, sharehold-  
8 er's, or member's maximum tax liability.

9 (ii) INTERIM DISTRIBUTIONS.—In addition to an annual  
10 distribution, a licensee may make a distribution under this  
11 subparagraph at any time during any calendar quarter based  
12 on an estimate of the maximum tax liability.

13 (iii) EXCESS DISTRIBUTION.—If a licensee makes 1 or  
14 more interim distributions for a calendar year, and the aggre-  
15 gate amount of those distributions exceeds the maximum  
16 amount that the licensee could have distributed based on a  
17 single annual computation, any subsequent distribution by the  
18 licensee under this subparagraph shall be reduced by an  
19 amount equal to the excess amount distributed.

20 (B) DISTRIBUTIONS TO INVESTORS.—After making any dis-  
21 tributions as provided in subparagraph (A), a licensee with partici-  
22 pating securities outstanding may distribute the balance of income  
23 to its investors (including the Administrator, in the percentages  
24 specified in paragraph (11)) if there are no accumulated and un-  
25 paid prioritized payments and if all amounts due the Adminis-  
26 trator under paragraph (11) have been paid in full, subject to the  
27 following conditions:

28 (i) As of the date of the proposed distribution, if the  
29 amount of leverage outstanding is more than 200 percent of  
30 the amount of private capital, any amounts distributed shall  
31 be made to private investors and to the Administrator in the  
32 ratio of leverage to private capital.

33 (ii) As of the date of the proposed distribution, if the  
34 amount of leverage outstanding is more than 100 percent but  
35 not more than 200 percent of the amount of private capital,  
36 50 percent of any amounts distributed shall be made to the  
37 Administrator and 50 percent shall be made to the private in-  
38 vestors.

39 (iii) If the amount of leverage outstanding is 100 percent,  
40 or less, of the amount of private capital, the ratio shall be  
41 that for distribution of profits as provided in paragraph (11).

(iv) Any amount received by the Administrator under clause (i) or (ii) shall be applied 1st as profit participation as provided in paragraph (11), and any remainder shall be applied as a prepayment of the principal amount of the participating securities or debentures.

(C) RETURN OF CAPITAL TO INVESTORS.—

(i) IN GENERAL.—After making any distributions under subparagraph (A), a licensee with participating securities outstanding may return capital to its investors (including the Administrator) if there are no accumulated and unpaid prioritized payments and if all amounts due the Administrator under paragraph (11) have been paid in full.

(ii) RATIO.—Except as provided in clause (iii), any distribution under this subparagraph shall be made to private investors and to the Administrator in the ratio of private capital to leverage as of the date of the proposed distribution.

(iii) NO REQUIRED DISTRIBUTION TO ADMINISTRATOR.—If a licensee's amount of leverage outstanding is less than 50 percent of the amount of private capital or \$10,000,000, whichever is less, no distribution shall be required to be made to the Administrator unless the Administrator determines, on a case by case basis, to require a distribution to the Administrator to reduce the amount of outstanding leverage to an amount less than \$10,000,000.

(11) ADMINISTRATOR'S PROFIT PARTICIPATION.—

(A) IN GENERAL.—A licensee that issues participating securities shall agree to allocate to the Administrator a share of its profits determined by the relationship of its private capital to the amount of participating securities guaranteed by the Administrator in accordance with the following:

(i) If the total amount of participating securities is 100 percent of private capital or less, the licensee shall allocate to the Administrator a percentage share computed as follows:

(I)(aa) the amount of participating securities; divided by

(bb) the amount of private capital; multiplied by

(II) 9 percent.

(ii) If the total amount of participating securities is more than 100 percent but not greater than 200 percent of private capital, the licensee shall allocate to the Administrator a percentage share computed as follows:

1 (I) 9 percent; plus

2 (II)(aa) the amount of participating securities minus  
3 the amount of private capital; divided by

4 (bb) the amount of private capital; multiplied by

5 (cc) 3 percent.

6 (B) MANAGEMENT EXPENSES.—For purposes of computing  
7 profit participation under this paragraph, except as otherwise de-  
8 termined by the Administrator, the management expenses of a li-  
9 censee that issues participating securities shall not be greater than  
10 2.5 percent per year of the combined capital of the company, plus  
11 \$125,000 if the licensee's combined capital is less than  
12 \$20,000,000.

13 (C) MAXIMUM PERCENTAGE.—

14 (i) IN GENERAL.—Notwithstanding any other provision of  
15 this paragraph, unless required by operation of clause (ii), the  
16 total percentage required by this paragraph shall not exceed  
17 12 percent.

18 (ii) ADJUSTMENT.—If, on the date on which a participat-  
19 ing security is marketed, the interest rate on Treasury bonds  
20 with a maturity of 10 years is a rate other than 8 percent,  
21 the Administrator shall adjust the rate specified in subpara-  
22 graph (A), either higher or lower, by the same percentage by  
23 which the Treasury bond rate is higher or lower than 8 per-  
24 cent.

25 (D) EFFECT OF PARAGRAPH.—This paragraph does not create  
26 any ownership interest of the Administrator in a licensee.

27 (12) IN-KIND DISTRIBUTIONS.—

28 (A) IN GENERAL.—A licensee may make an in-kind distribution  
29 of securities only if the securities are publicly traded and market-  
30 able.

31 (B) ADMINISTRATOR'S SHARE.—

32 (i) IN GENERAL.—A licensee shall deposit the Administra-  
33 tor's share of an in-kind distribution of securities for disposi-  
34 tion with a trustee designated by the Administrator, or, at  
35 the option of the Administrator and with the agreement of  
36 the licensee, the Administrator may direct the licensee to re-  
37 tain the Administrator's share.

38 (ii) TRUSTEE.—A trustee designated by the Administrator  
39 under clause (i) shall be a person that is knowledgeable about  
40 and proficient in the marketing of thinly traded securities.

1 (iii) SALE.—If the licensee retains the Administrator's  
2 share, the licensee shall sell the Administrator's share and  
3 promptly remit the proceeds to the Administrator.

4 (13) ADDITIONAL RESTRICTIONS AND LIMITATIONS.—Participating  
5 securities guaranteed under this subsection shall be subject to such re-  
6 strictions and limitations, in addition to restrictions and limitations  
7 specified in this subsection, as the Administrator may determine.

8 (h) COMPUTATION OF AMOUNTS DUE UNDER PARTICIPATING SECURI-  
9 TIES.—The computation of amounts due the Administrator under partici-  
10 pating securities shall be subject to the following terms and conditions:

11 (1) The formula in subsection (g)(11) shall be computed annually,  
12 and the Administrator shall receive distributions of the Administrator's  
13 profit participation at the same time as other investors in a licensee.

14 (2) The formula shall not be modified due to an increase in the pri-  
15 vate capital unless the increase is provided for in a proposed business  
16 plan submitted to and approved by the Administrator.

17 (3) After a distribution is made, the Administrator's share of the  
18 distribution shall not be recomputed or reduced.

19 (4) If a licensee prepays or repays a participating security, the Ad-  
20 ministrator shall receive the requisite participation on the distribution  
21 of profits due to any investments held by the licensee on the date of  
22 the prepayment or repayment.

23 (5) A licensee that was licensed on or before March 31, 1993, may  
24 exclude from profit participation all investments held on that date. If  
25 such a licensee does so, the Administrator shall determine the amount  
26 of the future expenses attributable to the prior investment. If the li-  
27 censee issues participating securities to refinance debentures as author-  
28 ized in subsection (g)(9), the licensee may not exclude profits on exist-  
29 ing investments under this paragraph.

30 (i) LEVERAGE FEE.—With respect to leverage granted by the Adminis-  
31 trator to a licensee, the Administrator shall collect from the licensee a non-  
32 refundable fee in an amount equal to 3 percent of the face amount of the  
33 leverage in the following manner:

34 (1) 1 percent on the date on which the Administrator enters into a  
35 commitment for leverage with the licensee.

36 (2) The balance of 2 percent (or 3 percent if no commitment has  
37 been entered into by the Administrator) on the date on which the lever-  
38 age is drawn by the licensee.

39 (j) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits re-  
40 ceived and retained by the Administrator under this section shall be in-  
41 cluded in the calculations made by the Director of the Office of Manage-

1 ment and Budget to offset the cost (as defined in section 502 of the Federal  
2 Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of pur-  
3 chasing and guaranteeing debentures and participating securities under this  
4 chapter.

5 (k) PERIODIC ISSUANCE OF GUARANTEES.—The Administrator shall  
6 issue guarantees under this section—

7 (1) at periodic intervals of not less than every 12 months; and

8 (2) at such shorter intervals as the Administrator considers appro-  
9 priate, taking into consideration the amount and number of guarantees.

10 (l) ENERGY SAVING DEBENTURES.—In addition to any other authority  
11 under this subtitle, a small business investment company licensed in fiscal  
12 year 2009 or any fiscal year thereafter may issue energy saving debentures.

13 **§ 303105. Equity capital for small business concerns**

14 (a) FUNCTION OF LICENSEES.—It shall be a function of a licensee to pro-  
15 vide a source of equity capital for small business concerns in such manner  
16 and under such terms as the licensee may determine in accordance with the  
17 regulations of the Administrator.

18 (b) CONDITIONS.—Before a licensee provides any capital to a small busi-  
19 ness concern under this section—

20 (1) the licensee may require the small business concern to refinance  
21 any or all of its outstanding indebtedness so that the licensee is the  
22 only holder of any evidence of indebtedness of the small business con-  
23 cern; and

24 (2) except as provided in regulations issued by the Administrator,  
25 the small business concern shall agree that the small business concern  
26 will not thereafter incur any indebtedness without first securing the ap-  
27 proval of the licensee and giving the licensee the 1st opportunity to fi-  
28 nance the indebtedness.

29 (c) DIRECT OR COOPERATIVE PROVISION OF CAPITAL.—Equity capital  
30 provided to an incorporated small business concern under this section may  
31 be provided directly or in cooperation with other investors, incorporated or  
32 unincorporated, through agreements to participate on an immediate basis.

33 **§ 303106. Long-term loans to small business concerns**

34 (a) AUTHORIZATION.—A licensee may make a loan, in the manner and  
35 subject to the conditions described in this section, to a small business con-  
36 cern to provide the small business concern with funds needed for sound fi-  
37 nancing, growth, modernization, and expansion.

38 (b) DIRECT LOANS; LOANS ON PARTICIPATION BASIS.—A loan made  
39 under this section may be made directly or in cooperation with 1 or more  
40 other lenders through an agreement to participate on an immediate or de-  
41 ferred basis.

1 (c) MAXIMUM RATE OF INTEREST.—

2 (1) IN GENERAL.—The maximum rate of interest for a licensee's  
3 share of a loan made under this section shall be determined by the Ad-  
4 ministrator.

5 (2) BASIS OF MAXIMUM RATE.—The Administrator shall permit a li-  
6 censee that has issued debentures under this chapter to charge a maxi-  
7 mum rate of interest based on—

8 (A) the coupon rate of interest on the outstanding debentures,  
9 determined on an annual basis; plus

10 (B) such other expenses of the licensee as may be approved by  
11 the Administrator.

12 (d) MATURITY.—A loan made under this section shall have a maturity  
13 not exceeding 20 years.

14 (e) SOUNDNESS OF LOAN; SECURITY.—A loan made under this section  
15 shall be of such sound value, or so secured, as reasonably to ensure repay-  
16 ment.

17 (f) EXTENSION OR RENEWAL.—A licensee that has made a loan to a  
18 small business concern under this section may extend the maturity of or  
19 renew the loan for additional periods, not exceeding 10 years, if the licensee  
20 finds that the extension or renewal will aid in the orderly liquidation of the  
21 loan.

22 **§ 303107. Limitation on amount of financing**

23 If a licensee has obtained financing from the Administrator and the fi-  
24 nancing remains outstanding, the aggregate amount of obligations and secu-  
25 rities acquired and for which commitments may be issued by the licensee  
26 under this chapter for any single small business concern shall not, without  
27 the approval of the Administrator, exceed 10 percent of the sum of—

28 (1) the private capital of the licensee; and

29 (2) the total amount of leverage projected by the licensee in the li-  
30 censee's business plan that was approved by the Administrator at the  
31 time of the grant of the licensee's license.

32 **§ 303108. Cooperation with banks and other investors or**  
33 **lenders**

34 (a) IN GENERAL.—Under any circumstances in which it is practicable,  
35 the operations of a licensee (including the generation of business) may be  
36 undertaken in cooperation with banks or other investors or lenders, and any  
37 servicing or initial investigation required for loans or acquisitions of securi-  
38 ties by the licensee under this chapter may be handled through such banks  
39 or other investors or lenders on a fee basis.

40 (b) FEES.—A licensee may receive fees for services rendered to banks and  
41 other investors and lenders.

1    **§ 303109. Advisory services; Federal Reserve Banks as de-**  
2                   **positories or fiscal agents; investment of funds**

3           (a) ADVISORY SERVICES.—A licensee, under any circumstances in which  
4    it is practicable, may—

5               (1) use the advisory services of the Federal Reserve System and of  
6               the Department of Commerce that are available for and useful to in-  
7               dustrial and commercial businesses; and

8               (2) provide consulting and advisory services on a fee basis and have  
9               on its staff persons competent to provide such services.

10          (b) FEDERAL RESERVE BANK AS DEPOSITORY OR FISCAL AGENT.—A  
11    Federal Reserve bank may act as a depository or fiscal agent for a licensee.

12          (c) INVESTMENT OF FUNDS.—A licensee that was licensed before October  
13    1, 2004, and has outstanding financings may invest funds not needed for  
14    its operations—

15               (1) in direct obligations of, or obligations guaranteed as to principal  
16               and interest by, the United States;

17               (2) in certificates of deposit or other accounts of federally insured  
18               banks or other federally insured depository institutions, if the certifi-  
19               cates or other accounts mature or are otherwise fully available not  
20               more than 1 year after the date of the investment; or

21               (3) in mutual funds, securities, or other instruments that consist of,  
22               or represent pooled assets of, investments described in paragraph (1)  
23               or (2).

24    **§ 303110. Nonliability of the United States**

25          Except as expressly provided otherwise in this subtitle, nothing in this  
26    subtitle or in any other provision of law shall be deemed to impose any li-  
27    ability on the United States with respect to any obligation entered into, or  
28    stocks issued, or commitments made, by a licensee.

29    **§ 303111. Certifications of eligibility**

30          (a) CERTIFICATION BY SMALL BUSINESS CONCERN.—Before receiving fi-  
31    nancial assistance from a licensee, a small business concern shall certify in  
32    writing that the small business concern meets the applicable eligibility re-  
33    quirements of this chapter.

34          (b) CERTIFICATION BY LICENSEE.—Before providing financial assistance  
35    to a small business concern under this chapter, a licensee shall certify in  
36    writing that—

37               (1) the licensee has reviewed the application for assistance of the  
38               small business concern; and

39               (2) all documentation and other information supports the eligibility  
40               of the applicant.

1 (c) RETENTION OF CERTIFICATIONS.—A certificate made under sub-  
2 section (a) or (b) shall be retained by a licensee for the duration of the fi-  
3 nancial assistance covered by the certificate.

4 **§ 303112. Interest rates**

5 (a) DEFINITION OF INTEREST.—In this section:

6 (1) IN GENERAL.—The term “interest” means the maximum manda-  
7 tory sum, expressed in dollars or as a percentage rate, that is payable  
8 with respect to a business loan amount received by a small business  
9 concern.

10 (2) EXCLUSION.—The term “interest” does not include the value, if  
11 any, of a contingent obligation (including a warrant, royalty, or conver-  
12 sion right) granting a licensee an ownership interest in the equity or  
13 increased future revenue of a small business concern receiving the busi-  
14 ness loan.

15 (b) INTEREST RATE.—A licensee may charge interest on a loan at a rate  
16 that does not exceed the maximum rate prescribed by regulation by the Ad-  
17 ministrator for loans made by any licensee (determined without regard to  
18 any State rate incorporated by the regulation).

19 (c) PREEMPTION OF STATE LAW.—A State law (including a constitu-  
20 tional provision) shall be preempted for purposes of subsection (a) with re-  
21 spect to a loan if the loan is made—

22 (1) before the date on which the State adopts a law, or certifies that  
23 the voters of the State have voted in favor of any provision, constitu-  
24 tional or otherwise, that states explicitly and by its terms that the  
25 State does not want this section to apply with respect to loans made  
26 in the State; or

27 (2) on or after the date on which such a law is adopted or such a  
28 certification is made, pursuant to a commitment to make the loan that  
29 was entered into before the date on which the law is adopted or the  
30 certification is made.

31 (d) EXCESSIVE INTEREST.—

32 (1) FORFEITURE.—If the maximum rate of interest authorized under  
33 subsection (a) on a loan made by a licensee exceeds the rate that would  
34 be authorized by applicable State law if the State law were not pre-  
35 empted under subsection (a), the charging of interest at a rate in ex-  
36 cess of the rate authorized by subsection (a) shall be deemed a forfeit-  
37 ure of the greater of—

38 (A) all interest that the loan carries with it; or

39 (B) all interest that has been agreed to be paid on the loan.

40 (2) DOUBLE RECOVERY.—In the case of a loan with respect to which  
41 there is a forfeiture of interest under paragraph (1), the person that



1       paid the interest may recover from the licensee that made the loan, in  
2       a civil action commenced in a court of appropriate jurisdiction not later  
3       than 2 years after the most recent payment of interest, an amount  
4       equal to twice the amount of the interest paid on the loan.

5       **§ 303113. Conflicts of interest**

6       (a) IN GENERAL.—For the purpose of controlling conflicts of interest  
7       that may be detrimental to small business concerns, to licensees, to the  
8       shareholders, partners, or members of small business concerns or licensees,  
9       or to the purposes of this subtitle, the Administrator shall adopt regulations  
10      to govern transactions with—

11       (1) any officer, director, shareholder, partner, or member of a li-  
12      censee; or

13       (2) any person or concern in which any interest, direct or indirect,  
14      financial or otherwise, is held by any officer, director, shareholder,  
15      partner, or member of—

16           (A) a licensee; or

17           (B) any person or concern with an interest, direct or indirect,  
18      financial or otherwise, in a licensee.

19      (b) CONTENTS.—The regulations under subsection (a) shall include ap-  
20      propriate requirements for public disclosure necessary to the purposes of  
21      this section.

22      **§ 303114. Ineligibility of guaranteed obligations for pur-**  
23      **chase by Federal Financing Bank**

24      No provision of law authorizes the Federal Financing Bank to acquire—

25       (1) any obligation the payment of principal or interest on which has  
26      at any time been guaranteed in whole or in part under this chapter;

27       (2) any obligation that is an interest in an obligation described in  
28      paragraph (1); or

29       (3) any obligation that is secured by, or substantially all of the value  
30      of which is attributable to, an obligation described in paragraph (1) or  
31      (2).

32      **§ 303115. Trust certificates**

33      (a) ISSUANCE.—

34       (1) IN GENERAL.—The Administrator may issue trust certificates  
35      representing ownership of all or a fractional part of—

36           (A) debentures issued by a licensee and guaranteed by the Ad-  
37      ministrator under this chapter; or

38           (B) participating securities issued by a licensee and purchased  
39      and guaranteed under section 303104 of this title.

40       (2) TRUST OR POOL.—A trust certificate issued under paragraph (1)  
41      shall be based on and backed by a trust or pool approved by the Ad-

1           ministrator and composed solely of guaranteed debentures or guaran-  
2           teed participating securities.

3       (b) GUARANTEE.—

4           (1) IN GENERAL.—The Administrator may, on such terms and con-  
5           ditions as the Administrator considers appropriate, guarantee the time-  
6           ly payment of the principal of and interest on trust certificates issued  
7           by the Administrator (or an agent of the Administrator) for purposes  
8           of this section.

9           (2) LIMITATION.—A guarantee shall be limited to the extent of prin-  
10          cipal and interest on the guaranteed debentures or the redemption  
11          price of and priority payments on the participating securities that com-  
12          pose the trust or pool.

13       (3) PREPAYMENT OR REDEMPTION.—

14           (A) REDUCTION OF GUARANTEE.—If a debenture in a trust or  
15           pool is prepaid or a participating security is redeemed, voluntarily  
16           or involuntarily, or in the event of default of a debenture or vol-  
17           untary or involuntary redemption of a participating security, the  
18           guarantee of timely payment of principal and interest on the relat-  
19           ed trust certificates shall be reduced in proportion to the amount  
20           of principal and interest that the prepaid debenture or redeemed  
21           participating security and priority payments represent in the trust  
22           or pool.

23           (B) LIMITATION ON GUARANTEE OF INTEREST.—Interest on a  
24           prepaid or defaulted debenture or a priority payment on a partici-  
25           pating security shall accrue and be guaranteed by the Adminis-  
26           trator only through the date of payment on the guarantee.

27           (C) CALL OF TRUST CERTIFICATE.—During the term of a trust  
28           certificate, the trust certificate may be called for redemption due  
29           to prepayment or default of all debentures or redemption, vol-  
30           untary or involuntary, of all participating securities residing in the  
31           trust or pool.

32       (c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith  
33       and credit of the United States is pledged to the payment of all amounts  
34       that may be required to be paid under any guarantee of a trust certificate  
35       issued by the Administrator (or an agent of the Administrator) under this  
36       section.

37       (d) FEES.—

38           (1) ADMINISTRATOR.—The Administrator shall not collect a fee for  
39           a guarantee under this section.

40           (2) AGENT OF THE ADMINISTRATOR.—This subsection does not pre-  
41           clude an agent of the Administrator from collecting a fee approved by

1 the Administrator for performing the functions described in subsection  
2 (f)(2).

3 (e) SUBROGATION; OWNERSHIP RIGHTS IN DEBENTURES AND PARTICI-  
4 PATING SECURITIES.—

5 (1) SUBROGATION.—If the Administrator pays a claim under a guar-  
6 antee issued under this section, the Administrator shall be subrogated  
7 fully to the rights satisfied by the payment.

8 (2) OWNERSHIP RIGHTS IN DEBENTURES AND PARTICIPATING SECU-  
9 RITIES.—No Federal, State or local law shall preclude or limit the ex-  
10 ercise by the Administrator of the Administrator's ownership rights in  
11 the debentures or participating securities residing in a trust or pool  
12 against which trust certificates are issued.

13 (f) CENTRAL REGISTRATION; REGULATION OF BROKERS AND DEAL-  
14 ERS.—

15 (1) CENTRAL REGISTRATION.—The Administrator shall provide for  
16 a central registration of all trust certificates sold under this section.

17 (2) AGENT.—

18 (A) IN GENERAL.—The Administrator shall contract with 1 or  
19 more agents to carry out on behalf of the Administrator the pool-  
20 ing and the central registration functions of this section including,  
21 notwithstanding any other provision of law—

22 (i) maintenance on behalf of and under the direction of the  
23 Administrator, such commercial bank accounts or investments  
24 in obligations of the United States as may be necessary to fa-  
25 cilitate trusts or pools backed by debentures or participating  
26 securities guaranteed under this chapter; and

27 (ii) the issuance of trust certificates to facilitate such pool-  
28 ings.

29 (B) BOND OR INSURANCE.—An agent under subparagraph (A)  
30 shall provide a fidelity bond or insurance in such amounts as the  
31 Administrator determines to be necessary to fully protect the in-  
32 terests of the Government.

33 (3) DISCLOSURE.—The Administrator shall require a seller of a trust  
34 certificate issued under this section to disclose to the purchaser, before  
35 the sale, information on the terms, conditions, and yield of the trust  
36 certificate.

37 (4) REGULATION OF BROKERS AND DEALERS.—The Administrator  
38 may regulate brokers and dealers in trust certificates sold under this  
39 section.

1           (5) EFFECT OF SUBSECTION.—This subsection does not preclude the  
2           use of a book-entry or other electronic form of registration for trust  
3           certificates.

4           (g) PERIODIC ISSUANCE OF TRUST CERTIFICATES.—The Administrator  
5           shall issue trust certificates under this section—

6                 (1) at periodic intervals of not less than every 12 months; and

7                 (2) at such shorter intervals as the Administrator considers appro-  
8           priate, taking into consideration the amount and number of trust cer-  
9           tificates.

10       **§ 303116. Regulations**

11       The Administrator may prescribe regulations governing the operations of  
12       licensees, and regulations to carry out this subtitle, in accordance with the  
13       purposes of this subtitle.

14       **§ 303117. Unlawful acts and omissions**

15       (a) VIOLATION BY LICENSEE DEEMED VIOLATION BY PERSON PARTICI-  
16       PATING.—If a licensee violates any provision of this subtitle (including a  
17       regulation issued under this subtitle) by reason of its failure to comply with  
18       the terms of the provision (or regulation) or by reason of its engaging in  
19       any act or practice that constitutes or will constitute a violation of the pro-  
20       vision (or regulation), the violation shall also be a violation and an unlawful  
21       act on the part of any person who, directly or indirectly, authorizes, orders,  
22       participates in, or causes, brings about, counsels, aids, or abets in the com-  
23       mission of any act, practice, or transaction that constitutes or will con-  
24       stitute, in whole or in part, the violation.

25       (b) BREACH OF FIDUCIARY DUTY.—It shall be unlawful for an officer,  
26       director, employee, agent, or other participant in the management or con-  
27       duct of the affairs of a licensee to engage in any act or practice, or to omit  
28       any act, in breach of the fiduciary duty of the officer, director, employee,  
29       agent, or participant if, as a result of engaging in the act or practice or  
30       of the omission to act, the licensee suffers or is in imminent danger of suf-  
31       fering financial loss or other damage.

32       (c) DISQUALIFICATION OF OFFICERS AND EMPLOYEES FOR DISHONESTY,  
33       FRAUD, OR BREACH OF TRUST.—Except with the written consent of the  
34       Administrator, it shall be unlawful—

35                 (1) for any person to take office as an officer, director, or employee  
36                 of a licensee, or to become an agent or participant in the conduct of  
37                 the affairs or management of a licensee, if the person—

38                         (A) has been convicted of—

39                                 (i) a felony; or

40                                 (ii) any other criminal offense involving dishonesty or  
41                                 breach of trust; or

1 (B) has been found civilly liable in damages, or is permanently  
2 or temporarily enjoined by an order, judgment, or decree of a  
3 court of competent jurisdiction, by reason of any act or practice  
4 involving fraud or breach of trust; or

5 (2) for any person to continue to serve in any of the above-described  
6 capacities, if the person, after November 6, 1966—

7 (A) is convicted of—

8 (i) a felony; or

9 (ii) any other criminal offense involving dishonesty or  
10 breach of trust; or

11 (B) is found civilly liable in damages, or is permanently or tem-  
12 porarily enjoined by an order, judgment, or decree of a court of  
13 competent jurisdiction, by reason of any act or practice involving  
14 fraud or breach of trust.

15 **§ 303118. Investigations; examinations; valuations**

16 (a) INVESTIGATION OF VIOLATIONS.—

17 (1) IN GENERAL.—The Administrator may make such investigations  
18 as the Administrator considers necessary to determine whether a li-  
19 censee or any other person has engaged or is about to engage in an  
20 act or practice that constitutes or will constitute a violation of any pro-  
21 vision of this subtitle (including a regulation under this subtitle) or of  
22 an order issued under this subtitle.

23 (2) STATEMENTS.—The Administrator shall permit any person to  
24 file with the Administrator a statement in writing, under oath or other-  
25 wise as the Administrator shall determine, as to all the facts and cir-  
26 cumstances concerning the matter to be investigated.

27 (3) POWERS.—For the purpose of any investigation, the Adminis-  
28 trator may administer oaths and affirmations, subpoena witnesses,  
29 compel the attendance of witnesses, take evidence, and require the pro-  
30 duction of any records that are relevant to the inquiry. The attendance  
31 of witnesses and the production of any such records may be required  
32 from any place in the United States.

33 (4) CONTUMACY OR REFUSAL TO OBEY ORDER OF THE ADMINIS-  
34 TRATOR.—

35 (A) IN GENERAL.—In case of contumacy by, or refusal to obey  
36 a subpoena issued to, any person (including a licensee), the Ad-  
37 ministrator may invoke the aid of any court of the United States  
38 within the jurisdiction of which the investigation or proceeding is  
39 carried on, or in which the person resides or carries on business,  
40 in requiring the attendance and testimony of witnesses and the  
41 production of records, and the court may issue an order requiring

1 the person to appear before the Administrator, to produce records,  
2 or to give testimony touching the matter under investigation.

3 (B) FAILURE TO OBEY COURT ORDER.—A failure to obey an  
4 order of the court may be punished by the court as a contempt  
5 of court.

6 (C) PROCESS.—Process in a case under this paragraph may be  
7 served in the judicial district of which the person is an inhabitant  
8 or wherever the person may be found.

9 (b) EXAMINATIONS OF AND REPORTS BY LICENSEES.—

10 (1) IN GENERAL.—A licensee shall be subject to examinations made  
11 by direction of the Investment Division of SBA, which may be con-  
12 ducted with the assistance of a private sector entity that has the quali-  
13 fications to conduct and expertise in conducting such examinations.

14 (2) EXAMINATION FEE.—The Administrator may assess against a li-  
15 censee that is examined, as an examination fee, the cost of the exam-  
16 ination (including compensation of the examiners), and the licensee  
17 shall pay the examination fee.

18 (3) USE OF EXAMINATION FEES.—Examination fees collected under  
19 this subsection shall be deposited in the account for salaries and ex-  
20 penses of SBA, and are authorized to be appropriated solely to cover  
21 the costs of examinations and other program oversight activities.

22 (4) REPORTS.—

23 (A) IN GENERAL.—A licensee shall make such reports to the  
24 Administrator at such times and in such form as the Adminis-  
25 trator may require.

26 (B) EXEMPTION.—The Administrator may exempt from a re-  
27 quirement to make a report a licensee that is registered under the  
28 Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) to the  
29 extent necessary to avoid duplication in reporting requirements.

30 (C) VIOLATION.—

31 (i) IN GENERAL.—Except as provided in clause (ii), a li-  
32 censee that violates any regulation or written directive issued  
33 by the Administrator requiring the filing of any regular or  
34 special report under subparagraph (A) shall pay to the  
35 United States a civil penalty of not more than \$100 for each  
36 day of the continuance of the licensee's failure to file the re-  
37 port, unless it is shown that the failure is due to reasonable  
38 cause and not due to willful neglect.

39 (ii) EXEMPTION FROM REPORTING REQUIREMENTS.—

40 (I) IN GENERAL.—If the Administrator determines  
41 that granting an exemption would not be inconsistent

1 with the public interest or the protection of SBA, the  
2 Administrator may exempt a licensee from clause (i)—  
3 (aa) in whole or in part; and  
4 (bb) on such terms and conditions and for such  
5 period of time as the Administrator considers nec-  
6 essary and appropriate.

7 (II) PROCEDURE.—The Administrator may grant an  
8 exemption under subclause (I)—

9 (aa) by regulation; or  
10 (bb) on application of an interested party, at any  
11 time previous to a violation described in clause (i),  
12 by order, after notice and opportunity for hearing.

13 (iii) ALTERNATIVE REQUIREMENTS.—The Administrator  
14 may for purposes of this subparagraph make any alternative  
15 requirement that the Administrator considers to be appro-  
16 priate to a situation.

17 (iv) CIVIL ACTION.—The civil penalty provided for in this  
18 subparagraph may be recovered in a civil action brought by  
19 the Administrator.

20 (5) SCOPE OF EXAMINATION.—An examination shall be conducted in  
21 such detail as to determine whether the licensee—

22 (A) has engaged solely in lawful activities and those con-  
23 templated by this chapter;

24 (B) has engaged in prohibited conflicts of interest;

25 (C) has acquired or exercised illegal control of an assisted small  
26 business;

27 (D) has made investments in small business concerns for not  
28 less than 1 year;

29 (E) has invested more than 20 percent of its capital in any indi-  
30 vidual small business, if that restriction is applicable;

31 (F) has engaged in relending, foreign investments, or passive in-  
32 vestments; or

33 (G) has charged an interest rate in excess of the maximum per-  
34 mitted by law.

35 (6) FREQUENCY OF EXAMINATION.—

36 (A) IN GENERAL.—A licensee shall be examined at least every  
37 2 years.

38 (B) WAIVER.—The Administrator may waive an examination of  
39 a licensee—

40 (i) for up to 1 additional year if, the Administrator deter-  
41 mines that such a delay would be appropriate, based on the

1 amount of debentures being issued by the licensee and the re-  
2 payment record of the licensee, the prior operating experience  
3 of the licensee, the contents and results of the last examina-  
4 tion of the licensee, and the management expertise of the li-  
5 censee; or

6 (ii) if the licensee's operations have been suspended while  
7 the licensee is involved in litigation or is in receivership.

8 (c) VALUATIONS.—

9 (1) FREQUENCY OF VALUATIONS.—

10 (A) IN GENERAL.—A licensee shall submit to the Administrator  
11 a written valuation of the loans and investments of the licensee  
12 not less often than semiannually, or otherwise on the request of  
13 the Administrator, except that a licensee with no leverage out-  
14 standing shall submit a valuation annually unless the Adminis-  
15 trator determines otherwise.

16 (B) MATERIAL ADVERSE CHANGES.—Not later than 30 days  
17 after the end of a fiscal quarter of a licensee during which a mate-  
18 rial adverse change in the aggregate valuation of the loans and in-  
19 vestments or operations of the licensee occurs, the licensee shall  
20 notify the Administrator in writing of the nature and extent of  
21 that change.

22 (C) INDEPENDENT CERTIFICATION.—

23 (i) IN GENERAL.—Not less than once during each fiscal  
24 year, a licensee shall submit to the Administrator the finan-  
25 cial statements of the licensee, audited by an independent cer-  
26 tified public accountant approved by the Administrator.

27 (ii) AUDIT REQUIREMENTS.—An audit conducted under  
28 clause (i) shall include—

29 (I) a review of the procedures and documentation used  
30 by the licensee in preparing the valuations required by  
31 this section; and

32 (II) a statement by the independent certified public  
33 accountant that the valuations were prepared in con-  
34 formity with the valuation criteria applicable to the li-  
35 censee established in accordance with paragraph (2).

36 (2) VALUATION CRITERIA.—A valuation submitted under this sub-  
37 section shall be prepared by the licensee in accordance with valuation  
38 criteria that—

39 (A) shall be established or approved by the Administrator; and

40 (B) shall include appropriate safeguards to ensure that the non-  
41 cash assets of a licensee are not overvalued.



1    **§ 303119. Revocation and suspension of licenses; cease and**  
2            **desist orders**

3           (a) GROUNDS FOR REVOCATION OR SUSPENSION.—The Administrator  
4    may revoke or suspend a license—

5               (1) for a false statement knowingly made in a written statement re-  
6               quired under this chapter (including a regulation under this chapter);

7               (2) for failure, in a written statement required under this chapter  
8               (including a regulation under this chapter), to state a material fact  
9               necessary to make the statement not misleading in the light of the cir-  
10              cumstances under which the statement is made;

11              (3) for willful or repeated violation of, or willful or repeated failure  
12              to observe, any provision of this chapter (including a regulation under  
13              this chapter); or

14              (4) for violation of, or failure to observe, a cease and desist order  
15              issued by the Administrator under this section.

16           (b) GROUNDS FOR CEASE AND DESIST ORDER.—If a licensee or any  
17    other person has not complied with any provision of this subtitle (including  
18    a regulation issued under this subtitle) or is engaging or is about to engage  
19    in any act or practice that constitutes or will constitute a violation of this  
20    subtitle (including a regulation), the Administrator may—

21               (1) order such licensee or other person—

22                   (A) to cease and desist from the action or failure to act; and

23                   (B) to take such action or to refrain from such action as the  
24                   Administrator considers necessary to ensure compliance with this  
25                   subtitle (including regulations); and

26               (2) suspend the license of a licensee against which an order has been  
27               issued until the licensee complies with the order.

28           (c) PROCEDURE.—

29               (1) ORDER TO SHOW CAUSE.—

30                   (A) IN GENERAL.—Before revoking or suspending a license  
31                   under subsection (a) or issuing a cease and desist order under  
32                   subsection (b), the Administrator shall serve on the licensee and  
33                   any other person involved an order to show cause why an order  
34                   revoking or suspending the license or a cease and desist order  
35                   should not be issued.

36                   (B) CONTENTS.—An order to show cause shall—

37                       (i) contain a statement of the matters of fact and law as-  
38                       serted by the Administrator and the legal authority and juris-  
39                       diction under which a hearing is to be held; and

40                       (ii) state that a hearing will be held before the Adminis-  
41                       trator at a time and place stated in the order.

1           (2) DETERMINATION.—

2           (A) IN GENERAL.—If, after hearing (or waiver of hearing), the  
3 Administrator determines on the record that an order revoking or  
4 suspending the license or a cease and desist order should issue,  
5 the Administrator shall promptly issue such an order.

6           (B) CONTENTS.—An order revoking or suspending a license or  
7 cease and desist order shall—

8               (i) include a statement of the findings of the Administrator  
9 and the grounds and reasons for the order; and

10              (ii) state the effective date of the order.

11           (C) SERVICE.—The Administrator shall cause an order revoking  
12 or suspending a license or cease and desist order to be served on  
13 the licensee and any other person involved.

14       (d) SUBPOENAS.—

15           (1) IN GENERAL.—The Administrator may require by subpoena the  
16 attendance and testimony of witnesses and the production of all records  
17 relating to a hearing from any place in the United States.

18           (2) FEES AND MILEAGE.—A witness summoned before the Adminis-  
19 trator shall be paid by the party at whose instance the witness is called  
20 the same fees and mileage that are paid witnesses in the courts of the  
21 United States.

22           (3) DISOBEDIENCE OF SUBPOENA.—In case of disobedience to a sub-  
23 poena, the Administrator, or any party to a proceeding before the Ad-  
24 ministrator, may invoke the aid of any court of the United States in  
25 requiring the attendance and testimony of a witness and the production  
26 of a record.

27       (e) PETITION TO MODIFY OR SET ASIDE ORDER.—

28           (1) FILING.—

29           (A) PETITION BY RIGHT.—An order issued by the Adminis-  
30 trator under this section shall be final and conclusive unless, with-  
31 in 30 days after service of the order, the licensee or other person  
32 against which the order is issued appeals to the United States  
33 court of appeals for the circuit in which the licensee has its prin-  
34 cipal place of business by filing with the clerk of the court a peti-  
35 tion praying that the Administrator's order be set aside or modi-  
36 fied in the manner stated in the petition.

37           (B) PETITION BY LEAVE OF COURT.—After the expiration of  
38 the 30-day period described in subparagraph (A), a petition may  
39 be filed only by leave of court on a showing of reasonable grounds  
40 for failure to file the petition within the 30-day period.

1           (2) TRANSCRIPT.—The clerk of the court shall immediately cause a  
2       copy of the petition to be delivered to the Administrator, and the Ad-  
3       ministrator shall certify and file in the court a transcript of the record  
4       on which the order complained of was entered. If, before the transcript  
5       is filed, the Administrator amends or sets aside the order, in whole or  
6       in part, the petitioner may amend the petition within such time as the  
7       court may determine, on notice to the Administrator.

8           (3) STAY OR SUSPENSION.—The filing of a petition for review shall  
9       not of itself stay or suspend the operation of the order of the Adminis-  
10      trator, but the court of appeals may restrain or suspend, in whole or  
11      in part, the operation of the order pending the final hearing and deter-  
12      mination of the petition.

13          (4) COURT ACTION.—The court may affirm, modify, or set aside the  
14      order of the Administrator.

15          (5) ADDITIONAL EVIDENCE.—

16              (A) REOPENING OF HEARING.—If the court determines that the  
17      just and proper disposition of the case requires the taking of addi-  
18      tional evidence, the court shall order the Administrator to reopen  
19      the hearing for the taking of such evidence, in such manner and  
20      on such terms and conditions as the court considers proper.

21              (B) MODIFIED OR NEW FINDINGS.—The Administrator—

22                  (i) may modify the findings as to the facts, or make new  
23      findings, by reason of the additional evidence so taken; and

24                  (ii) shall file any modified or new findings and the amend-  
25      ments, if any, of the order, with the record of such additional  
26      evidence.

27          (6) LIMITATION ON CONSIDERATION OF OBJECTIONS.—No objection  
28      to an order of the Administrator shall be considered by the court unless  
29      the objection was urged before the Administrator or, if it was not so  
30      urged, unless there were reasonable grounds for failure to do so.

31          (7) REVIEW OF JUDGMENT.—A judgment of the court affirming,  
32      modifying, or setting aside an order of the Administrator shall be sub-  
33      ject only to review by the Supreme Court on certification or certiorari  
34      as provided in section 1254 of title 28.

35      (f) ENFORCEMENT OF ORDER.—

36              (1) IN GENERAL.—If a licensee or other person against which an  
37      order is issued under this section fails to obey the order, the Adminis-  
38      trator—

39                  (A) may apply to the United States court of appeals for the cir-  
40      cuit in which the licensee has its principal place of business for  
41      the enforcement of the order; and

1 (B) shall file a transcript of the record on which the order com-  
2 plained of was entered.

3 (2) NOTICE.—On filing of an application under paragraph (1), the  
4 court shall cause notice of the application to be served on the licensee  
5 or other person.

6 (3) EVIDENCE, PROCEDURE, AND JURISDICTION.—The evidence to  
7 be considered, the procedure to be followed, and the jurisdiction of the  
8 court shall be the same as is provided in subsection (e) for an applica-  
9 tion to set aside or modify an order.

10 **§ 303120. Removal or suspension of, or prohibition of par-**  
11 **ticipation by, management officials**

12 (a) REMOVAL.—

13 (1) NOTICE OF REMOVAL.—The Administrator may serve on a man-  
14 agement official a written notice of the Administrator's intention to re-  
15 move the management official if, in the opinion of the Administrator—

16 (A) the management official—

17 (i) has willfully and knowingly committed a substantial vio-  
18 lation of—

19 (I) this subtitle (including a regulation issued under  
20 this subtitle); or

21 (II) a cease and desist order that has become final; or

22 (ii) has willfully and knowingly committed or engaged in an  
23 act, omission, or practice that constitutes a substantial breach  
24 of a fiduciary duty of the management official as a manage-  
25 ment official; and

26 (B) the violation or breach of fiduciary duty is one involving  
27 personal dishonesty on the part of the management official.

28 (2) CONTENTS OF NOTICE.—A notice under paragraph (1) shall—

29 (A) contain a statement of the facts constituting grounds for  
30 the notice; and

31 (B) establish a time and place at which a hearing will be held  
32 on the proposed removal.

33 (3) HEARING.—

34 (A) TIMING.—A hearing on the notice shall be established for  
35 a date not earlier than 30 days nor later than 60 days after the  
36 date of service of the notice under paragraph (2), unless an earlier  
37 or a later date is set by the Administrator at the request of—

38 (i) the management official, for good cause; or

39 (ii) the Attorney General.

40 (B) CONSENT.—Unless the management official appears at a  
41 hearing under this paragraph in person or by an authorized rep-

1           representative, the management official shall be deemed to have con-  
2           sented to the issuance of an order of removal under paragraph (4).

3       (4) ISSUANCE OF ORDER OF REMOVAL.—

4           (A) IN GENERAL.—In the event of consent under paragraph  
5           (3)(B), or if on the record made at a hearing under this sub-  
6           section the Administrator finds that any of the grounds specified  
7           in the notice of removal has been established, the Administrator  
8           may issue such orders of removal from office as the Administrator  
9           considers appropriate.

10          (B) EFFECTIVENESS.—An order under subparagraph (A)  
11          shall—

12               (i) become effective on the expiration of 30 days after the  
13               date of service on the management official and the licensee  
14               (except in the case of an order issued on consent as described  
15               in paragraph (3)(B), which shall become effective at the time  
16               specified in the order); and

17               (ii) remain effective and enforceable, except to such extent  
18               as the order is stayed, modified, terminated, or set aside by  
19               action of the Administrator or a reviewing court in accord-  
20               ance with this section.

21       (b) SUSPENSION OR PROHIBITION OF PARTICIPATION.—

22           (1) IN GENERAL.—The Administrator may, if the Administrator con-  
23           siders it necessary for the protection of the licensee or the interests of  
24           SBA, suspend from office or prohibit from further participation in any  
25           manner in the management or conduct of the affairs of a licensee, or  
26           both, a management official described in subsection (a)(1) by written  
27           notice to that effect served on the management official and the licensee.

28           (2) EFFECTIVENESS.—A suspension or prohibition under paragraph  
29           (1)—

30               (A) shall become effective on service of notice under paragraph  
31               (1); and

32               (B) unless stayed by a court in proceedings under paragraph  
33               (3), shall remain in effect—

34                   (i) until completion of the administrative proceedings pur-  
35                   suant to a notice of intention to remove served under sub-  
36                   section (a); and

37                   (ii) until such time as the Administrator dismisses the  
38                   charges specified in the notice, or, if an order of removal or  
39                   prohibition is issued against the management official, until  
40                   the effective date of any such order.

1           (3) JUDICIAL REVIEW.—Not later than 10 days after a management  
2           official is suspended from office or prohibited from participation in the  
3           management or conduct of the affairs of a licensee under paragraph  
4           (1), the management official may apply to the United States district  
5           court for the judicial district in which the principal place of business  
6           of the licensee is located, or the United States District Court for the  
7           District of Columbia, for a stay of the suspension or prohibition pend-  
8           ing the completion of the administrative proceedings pursuant to a no-  
9           tice of intention to remove served on the management official under  
10          subsection (a), and the court shall have jurisdiction to stay the suspen-  
11          sion or prohibition.

12          (c) SUSPENSION, OR PROHIBITION OF PARTICIPATION, ON CRIMINAL  
13          CHARGES.—

14           (1) IN GENERAL.—If a management official is charged, in an infor-  
15           mation, indictment, or complaint authorized by a United States attor-  
16           ney, with the commission of or participation in a felony involving dis-  
17           honesty or breach of trust, the Administrator may, by written notice  
18           served on the management official, suspend the management official  
19           from office or prohibit the management official from further participa-  
20           tion in any manner in the management or conduct of the affairs of the  
21           licensee, or both.

22           (2) EFFECTIVENESS.—A suspension or prohibition under paragraph  
23           (1) shall remain in effect—

24                   (A) until the subject information, indictment, or complaint is fi-  
25                   nally disposed of; or

26                   (B) until it is terminated by the Administrator.

27           (3) CONVICTION.—If a judgment of conviction with respect to an of-  
28           fense described in paragraph (1) is entered against a management offi-  
29           cial, at such time as the judgment is not subject to further appellate  
30           review, the Administrator may issue and serve on the management offi-  
31           cial an order removing the management official from office, which re-  
32           moval shall become effective on service of a copy of the order on the  
33           licensee.

34           (4) DISMISSAL OR OTHER DISPOSITION.—A finding of not guilty or  
35           other disposition of charges described in paragraph (1) shall not pre-  
36           clude the Administrator from thereafter instituting proceedings to sus-  
37           pend or remove the management official from office, or to prohibit the  
38           management official from participation in the management or conduct  
39           of the affairs of the licensee, or both, under subsection (a) or (b).

40          (d) PROCEDURE.—

41           (1) HEARING VENUE.—A hearing under this section shall be—

1 (A) held in the Federal judicial district or in the territory in  
2 which the principal office of the licensee is located, unless the  
3 party afforded the hearing consents to another place; and

4 (B) conducted in accordance with chapter 5 of title 5.

5 (2) ISSUANCE OF ORDERS.—After a hearing under this section, and  
6 not later than 90 days after the Administrator notifies the parties that  
7 the case has been submitted for final decision, the Administrator  
8 shall—

9 (A) render a decision in the matter (which shall include findings  
10 of fact on which the decision is predicated); and

11 (B) serve on each party to the proceeding an order or orders  
12 consistent with this section.

13 (3) MODIFICATION OF ORDER.—The Administrator may modify, ter-  
14 minate, or set aside an order issued under this section—

15 (A) at any time, on such notice, and in such manner as the Ad-  
16 ministrator considers proper, unless a petition for review is timely  
17 filed in a court of appeals of the United States, as provided in  
18 paragraph (4)(B), and thereafter until the record in the proceed-  
19 ing has been filed in accordance with paragraph (4)(C); and

20 (B) on such filing of the record, with permission of the court.

21 (4) JUDICIAL REVIEW.—

22 (A) IN GENERAL.—Judicial review of an order issued under this  
23 section shall be exclusively as provided in this subsection.

24 (B) PETITION FOR REVIEW.—A party to a hearing under this  
25 section may obtain a review of an order issued under paragraph  
26 (2) (other than an order issued with the consent of the manage-  
27 ment official concerned or an order issued under subsection (c))  
28 by filing in the court of appeals of the United States for the cir-  
29 cuit in which the principal office of the licensee is located, or in  
30 the United States Court of Appeals for the District of Columbia  
31 Circuit, not later than 30 days after the date of service of the  
32 order, a written petition praying that the order of the Adminis-  
33 trator be modified, terminated, or set aside.

34 (C) NOTIFICATION TO THE ADMINISTRATOR.—A copy of a peti-  
35 tion filed under subparagraph (B) shall be forthwith transmitted  
36 by the clerk of the court to the Administrator, and thereupon the  
37 Administrator shall file in the court the record in the proceeding,  
38 as provided in section 2112 of title 28.

39 (D) COURT JURISDICTION.—On the filing of a petition under  
40 subparagraph (B)—

(i) the court shall have jurisdiction, which, on the filing of the record under subparagraph (C), shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administrator;

(ii) review of the proceedings shall be had as provided in chapter 7 of title 5; and

(iii) the judgment and decree of the court shall be final, except that the judgment and decree shall be subject to review by the Supreme Court on certiorari as provided in section 1254 of title 28.

(E) JUDICIAL REVIEW NOT A STAY.—The commencement of proceedings for judicial review under this paragraph shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administrator under this section.

**§ 303121. Direct civil enforcement actions**

(a) FORFEITURE OF RIGHTS, PRIVILEGES, AND FRANCHISES.—

(1) IN GENERAL.—If a licensee violates or fails to comply with any provision of this subtitle (including a regulation prescribed under this subtitle), all of the licensee's rights, privileges, and franchises derived from this subtitle may be forfeited.

(2) CIVIL ACTION.—Before a licensee is declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with or violation of this subtitle shall be determined by a court of the United States of competent jurisdiction in a civil action brought in the district, territory, or other place subject to the jurisdiction of the United States in which the principal office of the licensee is located. Any such civil action shall be brought by the United States at the instance of the Administrator or the Attorney General.

(b) INJUNCTIONS AND OTHER ORDERS.—

(1) IN GENERAL.—If a licensee or any other person engages or is about to engage in an act or practice that constitutes or will constitute a violation of any provision of this subtitle (including a regulation under this subtitle) or of any order issued under this subtitle, the Administrator may bring a civil action in United States district court or in a United States court of any place subject to the jurisdiction of the United States for an order enjoining the act or practice, or for an order enforcing compliance with the provision, regulation, or order, and the court shall have jurisdiction over the civil action and, on a showing by the Administrator that the licensee or other person has engaged or is about to engage in any such act or practice, a permanent or temporary



1 injunction, restraining order, or other order shall be granted without  
2 bond.

3 (2) JURISDICTION OVER LICENSEE AND ASSETS OF THE LI-  
4 CENSEE.—In a civil action under subsection (a), the court may, to such  
5 extent as the court considers necessary, take exclusive jurisdiction of  
6 the licensee and the assets of the licensee, wherever located, and the  
7 court shall have jurisdiction to appoint a trustee or receiver to hold or  
8 administer the assets of the licensee under the direction of the court.

9 (3) TRUSTEESHIP OR RECEIVERSHIP OVER LICENSEE.—

10 (A) IN GENERAL.—The Administrator may act as trustee or re-  
11 ceiver of the licensee on appointment by a court as provided in  
12 subparagraph (B).

13 (B) APPOINTMENT.—On request of the Administrator, the court  
14 may appoint the Administrator to act as trustee or receiver of the  
15 licensee unless the court considers that such an appointment  
16 would be inequitable or otherwise inappropriate by reason of spe-  
17 cial circumstances involved in the civil action.

## 18 **§ 303122. Jurisdiction; service of process**

19 A civil action or other proceeding brought under section 303118(b)(4)(C),  
20 303119, 303120, or 303121 of this title by the Administrator to enforce  
21 any liability or duty created by, or to enjoin any violation of, this subtitle,  
22 or any regulation or order promulgated under this subtitle shall be brought  
23 in the district in which the licensee maintains its principal office, and proc-  
24 ess in such cases may be served in any district in which the defendant main-  
25 tains its principal office or transacts business, or wherever the defendant  
26 may be found.

## 27 **Chapter 305—New Markets Venture** 28 **Capital Company Program**

Sec.

- 305101. Definitions.
- 305102. Establishment of program.
- 305103. Approval of new markets venture capital companies.
- 305104. Guarantee of new markets venture capital company debentures.
- 305105. Trust certificates.
- 305106. Fees.
- 305107. Operational assistance grants.
- 305108. Bank participation.
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- 305110. Regulations.
- 305111. Unlawful acts and omissions.
- 305112. Examinations.
- 305113. Removal or suspension of directors or officers.
- 305114. Direct civil enforcement actions.

## 29 **§ 305101. Definitions**

30 In this chapter:

31 (1) DEVELOPMENTAL VENTURE CAPITAL.—

1 (A) IN GENERAL.—The term “developmental venture capital”  
2 means capital in the form of an equity capital investment in a  
3 smaller enterprise made with a primary objective of fostering eco-  
4 nomic development in a low-income geographic area.

5 (B) EQUITY CAPITAL.—In subparagraph (A), the term “equity  
6 capital” has the meaning given the term in section  
7 303104(g)(1)(B) of this title.

8 (2) ELIGIBLE COMPANY.—The term “eligible company” means a  
9 company that—

10 (A) is a newly formed for-profit entity or a newly formed for-  
11 profit subsidiary of an existing entity;

12 (B) has a management team with experience in community de-  
13 velopment financing or relevant venture capital financing; and

14 (C) has a primary objective of economic development of 1 or  
15 more low-income geographic areas.

16 (3) LOW-INCOME INDIVIDUAL.—The term “low-income individual”  
17 means an individual whose income (adjusted for family size) does not  
18 exceed—

19 (A) in the case of an individual residing in a metropolitan area,  
20 80 percent of the median income of all individuals residing in the  
21 metropolitan area; and

22 (B) in the case of an individual residing in a nonmetropolitan  
23 area, the greater of—

24 (i) 80 percent of the median income of all individuals resid-  
25 ing in the nonmetropolitan area; or

26 (ii) 80 percent of the median income of all individuals re-  
27 siding in all of the nonmetropolitan areas in the State in  
28 which the individual resides.

29 (4) NEW MARKETS VENTURE CAPITAL COMPANY.—The term “new  
30 markets venture capital company” means a company that—

31 (A) has been granted final approval by the Administrator under  
32 section 305103(c) of this title; and

33 (B) has entered into a participation agreement with the Admin-  
34 istrator.

35 (5) OPERATIONAL ASSISTANCE.—The term “operational assistance”  
36 means management, marketing, and other technical assistance that as-  
37 sists a smaller enterprise with business development.

38 (6) PARTICIPATION AGREEMENT.—The term “participation agree-  
39 ment” means a participation agreement under section 305103(b)(4)(D)  
40 of this title.

1 (7) PROGRAM.—The term “program” means the new markets ven-  
2 ture capital company program.

3 (8) STATE.—The term “State” means a State, the District of Co-  
4 lumbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the  
5 Northern Mariana Islands, and any other commonwealth, territory, or  
6 possession of the United States.

7 **§ 305102. Establishment of program**

8 (a) IN GENERAL.—The Administrator shall establish a developmental  
9 venture capital program to be known as the new markets venture capital  
10 company program—

11 (1) with the purpose of promoting economic development and creat-  
12 ing wealth and job opportunities in low-income geographic areas and  
13 among individuals living in low-income geographic areas by encouraging  
14 developmental venture capital investments in smaller enterprises pri-  
15 marily located in low-income geographic areas; and

16 (2) with the mission of addressing the unmet equity investment  
17 needs of smaller enterprises located in low-income geographic areas.

18 (b) ACTIVITIES.—Under the program, the Administrator may—

19 (1) enter into participation agreements with new markets venture  
20 capital companies under section 305103(b)(4)(D) of this title for the  
21 purposes described in subsection (a);

22 (2) guarantee debentures issued by new markets venture capital  
23 companies under section 305104 of this title; and

24 (3) make grants to new markets venture capital companies and spe-  
25 cialized small business investment companies under section 305107 of  
26 this title.

27 **§ 305103. Approval of new markets venture capital compa-**  
28 **nies**

29 (a) APPLICATION.—To participate in the program as a new markets ven-  
30 ture capital company, an eligible company shall submit to the Administrator  
31 an application that includes—

32 (1) a business plan describing how the applicant intends to make  
33 successful developmental venture capital investments in identified low-  
34 income geographic areas;

35 (2) information regarding the community development finance or rel-  
36 evant venture capital qualifications and general reputation of the appli-  
37 cant’s management;

38 (3) a description of how the applicant intends to work with commu-  
39 nity organizations and to seek to address the unmet capital needs of  
40 the communities served;

(4) a proposal describing how the applicant intends to use the grant funds provided under this chapter to provide operational assistance to smaller enterprises financed by the applicant, including information regarding whether the applicant intends to use licensed professionals, when necessary, on the applicant's staff or from an outside entity;

(5) with respect to binding commitments to be made to the applicant under this chapter, an estimate of the ratio of cash to in-kind contributions;

(6) a description of the criteria to be used to evaluate whether and to what extent the applicant meets the objectives of the program;

(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the applicant's business plan; and

(8) such other information as the Administrator may require.

(b) CONDITIONAL APPROVAL.—

(1) IN GENERAL.—From among eligible companies submitting applications under subsection (a), the Administrator shall conditionally approve applicants to participate in the program.

(2) SELECTION CRITERIA.—In conditionally approving eligible companies under paragraph (1), the Administrator shall consider—

(A) the likelihood that an applicant will meet the goal of its business plan;

(B) the experience and background of an applicant's management team;

(C) the need for developmental venture capital investments in the geographic areas in which an applicant intends to invest;

(D) the extent to which an applicant will concentrate its activities on serving the geographic areas in which the applicant intends to invest;

(E) the likelihood that an applicant will be able to satisfy the conditions under paragraph (4);

(F) the extent to which the activities proposed by an applicant will expand economic opportunities in the geographic areas in which the applicant intends to invest;

(G) the strength of the applicant's proposal to provide operational assistance as the proposal relates to the ability of the applicant to meet applicable cash requirements and properly use in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by employees or by contractors; and

1 (H) any other factor that the Administrator considers appro-  
2 priate.

3 (3) NATIONWIDE DISTRIBUTION.—The Administrator shall select ap-  
4 plicants under paragraph (1) in a manner that promotes investment  
5 nationwide.

6 (4) REQUIREMENTS FOR FINAL APPROVAL.—

7 (A) SPECIFICATION OF DATE.—On granting conditional ap-  
8 proval of an applicant, the Administrator shall specify a date, not  
9 to exceed the date that is 2 years after the date of conditional ap-  
10 proval, by which the conditionally approved applicant shall satisfy  
11 the requirements stated in this paragraph.

12 (B) CAPITAL REQUIREMENT.—A conditionally approved appli-  
13 cant shall raise not less than \$5,000,000 of private capital or  
14 binding capital commitments from 1 or more investors (other than  
15 Federal agencies) that meet criteria established by the Adminis-  
16 trator.

17 (C) RESOURCES FOR OPERATIONAL ASSISTANCE FROM OTHERS  
18 THAN THE ADMINISTRATOR.—

19 (i) IN GENERAL.—To provide operational assistance to  
20 smaller enterprises expected to be financed by a conditionally  
21 approved applicant, the conditionally approved applicant—

22 (I) shall have binding commitments (for contribution  
23 in cash or in kind)—

24 (aa) from any sources other than the Adminis-  
25 trator that meet criteria established by the Adminis-  
26 trator;

27 (bb) payable or available over a multiyear period  
28 that the Administrator considers appropriate (not to  
29 exceed 10 years); and

30 (cc) in an amount that is not less than 30 percent  
31 of the total amount of capital and commitments  
32 raised under subparagraph (B);

33 (II) shall have purchased from an insurance company  
34 acceptable to the Administrator, using funds (other than  
35 the funds raised under subparagraph (B)) from any  
36 source other than the Administrator, an annuity that  
37 yields cash payments over a multiyear period acceptable  
38 to the Administrator (not to exceed 10 years) in an  
39 amount that is not less than 30 percent of the total  
40 amount of capital and commitments raised under sub-  
41 paragraph (B); or

(III) shall have binding commitments (for contributions in cash or in kind) of the type described in subclause (I) and shall have purchased an annuity of the type described in subclause (II), which in the aggregate make available, over a multiyear period acceptable to the Administrator (not to exceed 10 years), an amount that is not less than 30 percent of the total amount of capital and commitments raised under subparagraph (B).

(ii) EXCEPTION.—On a showing of special circumstances and good cause, the Administrator may consider an applicant to satisfy the requirements of clause (i) if the applicant has—

(I) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under clause (i); and

(II) binding commitments in an amount that is equal to not less than 20 percent of the amount required under clause (i).

(iii) LIMITATION.—To comply with the requirements of clauses (i) and (ii), the amount of in-kind contributions made by a conditionally approved applicant shall not exceed 50 percent of the total contributions made by the conditionally approved applicant.

(D) PARTICIPATION AGREEMENT.—A conditionally approved applicant shall enter into a participation agreement with the Administrator that—

(i) details the conditionally approved applicant's operating plan and investment criteria; and

(ii) requires the conditionally approved applicant, after final approval under subsection (c), to make investments in smaller enterprises at least 80 percent of which are located in low-income geographic areas.

(c) FINAL APPROVAL.—The Administrator shall—

(1) grant final approval to a conditionally approved applicant to operate as a new markets venture capital company if the conditionally approved applicant satisfies the requirements of paragraph (4) of subsection (b) on or before the expiration of the date specified under subparagraph (A) of that paragraph; or

(2) if the conditionally approved applicant fails to satisfy those requirements on or before the expiration of that date, revoke the conditional approval granted under subsection (b).

1    **§ 305104. Guarantee of new markets venture capital com-**  
2                   **pany debentures**

3           (a) IN GENERAL.—To enable a new markets venture capital company to  
4    make developmental venture capital investments in smaller enterprises in a  
5    low-income geographic area, the Administrator may guarantee the timely  
6    payment of principal and interest, as scheduled, on debentures issued by the  
7    new markets venture capital company.

8           (b) TERMS AND CONDITIONS.—The Administrator may make a guarantee  
9    under this section on such terms and conditions as the Administrator con-  
10   siders appropriate, except that the term of any debenture guaranteed under  
11   this section shall not exceed 15 years.

12          (c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith  
13   and credit of the United States is pledged to pay all amounts that may be  
14   required to be paid under any guarantee under this chapter.

15          (d) MAXIMUM AMOUNT OF GUARANTEE.—

16           (1) IN GENERAL.—The Administrator may guarantee the debentures  
17   issued by a new markets venture capital company only to the extent  
18   that the total face amount of outstanding guaranteed debentures of the  
19   new markets venture capital company does not exceed 150 percent of  
20   the private capital of the new markets venture capital company, as de-  
21   termined by the Administrator.

22           (2) TREATMENT OF CERTAIN FEDERAL FUNDS.—For purposes of  
23   paragraph (1), private capital may include capital that is considered to  
24   be Federal funds (within the meaning of section 301101(16)(C)(iii) of  
25   this title) if the capital is contributed by an investor other than a Fed-  
26   eral agency.

27          (e) INVESTMENT LIMITATIONS.—

28           (1) DEFINITION OF COVERED NEW MARKETS VENTURE CAPITAL  
29   COMPANY.—In this subsection, the term “covered new markets venture  
30   capital company” means a new markets venture capital company—

31               (A) that is granted final approval by the Administrator under  
32               section 305103(c) of this title on or after March 1, 2002; and

33               (B) that has obtained a financing from the Administrator.

34           (2) LIMITATION.—Except to the extent approved by the Adminis-  
35   trator, a covered new markets venture capital company shall not ac-  
36   quire or issue commitments for securities under this division for any  
37   single enterprise in an aggregate amount equal to more than 10 per-  
38   cent of the sum of—

39               (A) the regulatory capital of the covered new markets venture  
40               capital company; and

1 (B) the total amount of leverage projected in the participation  
2 agreement of the covered new markets venture capital company.

3 **§ 305105. Trust certificates**

4 (a) ISSUANCE.—

5 (1) IN GENERAL.—The Administrator, acting directly or through an  
6 agent, may issue trust certificates representing ownership of all or a  
7 fractional part of debentures issued by a new markets venture capital  
8 company and guaranteed by the Administrator under section 305104  
9 of this title.

10 (2) TRUST OR POOL.—Trust certificates issued under paragraph (1)  
11 shall be based on and backed by a trust or pool approved by the Ad-  
12 ministrator and composed solely of guaranteed debentures.

13 (b) GUARANTEE.—

14 (1) IN GENERAL.—The Administrator may, under such terms and  
15 conditions as the Administrator considers appropriate, guarantee the  
16 timely payment of the principal of and interest on trust certificates is-  
17 sued by the Administrator or an agent of the Administrator under this  
18 section.

19 (2) LIMITATION.—A guarantee under this subsection shall be limited  
20 to the extent of principal and interest on the guaranteed debentures  
21 that compose the trust or pool.

22 (3) PREPAYMENT OR DEFAULT.—

23 (A) IN GENERAL.—In the event that a debenture in a trust or  
24 pool is prepaid, or in the event of default of such a debenture, the  
25 guarantee of timely payment of principal and interest on the trust  
26 certificates shall be reduced in proportion to the amount of prin-  
27 cipal and interest that the prepaid debenture represents in the  
28 trust or pool.

29 (B) INTEREST PERIOD.—Interest on a prepaid or defaulted de-  
30 benture shall accrue and be guaranteed by the Administrator only  
31 through the date of payment of the guarantee.

32 (C) CALL.—At any time during the term of a trust certificate,  
33 a trust certificate may be called for redemption due to prepayment  
34 or default of all debentures that compose the trust or pool.

35 (c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith  
36 and credit of the United States is pledged to pay all amounts that may be  
37 required to be paid under any guarantee of a trust certificate issued by the  
38 Administrator or an agent of the Administrator under this section.

39 (d) FEES.—The Administrator shall not collect a fee for any guarantee  
40 of a trust certificate under this section, but an agent of the Administrator



1 may collect a fee approved by the Administrator for the functions described  
2 in subsection (f)(2).

3 (e) SUBROGATION AND OWNERSHIP RIGHTS.—

4 (1) SUBROGATION.—If the Administrator pays a claim under a guar-  
5 antee issued under this section, the Administrator shall be subrogated  
6 fully to the rights satisfied by the payment.

7 (2) OWNERSHIP RIGHTS.—No Federal, State, or local law shall pre-  
8 clude or limit the exercise by the Administrator of the ownership rights  
9 of the Administrator in the debentures residing in a trust or pool  
10 against which trust certificates are issued under this section.

11 (f) MANAGEMENT AND ADMINISTRATION.—

12 (1) REGISTRATION.—The Administrator may provide for a central  
13 registration of all trust certificates issued under this section.

14 (2) CONTRACTING OF FUNCTIONS.—

15 (A) IN GENERAL.—The Administrator may contract with 1 or  
16 more agents to carry out on behalf of the Administrator the pool-  
17 ing and the central registration functions provided for in this sec-  
18 tion including, notwithstanding any other provision of law—

19 (i) maintenance, on behalf of and under the direction of the  
20 Administrator, of such commercial bank accounts or invest-  
21 ments in obligations of the United States as may be necessary  
22 to facilitate the creation of trusts or pools backed by deben-  
23 tures guaranteed under section 305104 of this title; and

24 (ii) the issuance of trust certificates to facilitate the cre-  
25 ation of such trusts or pools.

26 (B) FIDELITY BOND OR INSURANCE REQUIREMENT.—An agent  
27 performing functions on behalf of the Administrator under this  
28 paragraph shall provide a fidelity bond or insurance in such  
29 amounts as the Administrator determines to be necessary to fully  
30 protect the interests of the United States.

31 (3) REGULATION OF BROKERS AND DEALERS.—The Administrator  
32 may regulate brokers and dealers in trust certificates issued under this  
33 section.

34 (4) FORM OF REGISTRATION.—This subsection does not preclude the  
35 use of a book-entry or other electronic form of registration for trust  
36 certificates issued under this section.

37 **§ 305106. Fees**

38 Except as provided in section 305105(d) of this title, the Administrator  
39 may charge such fees as the Administrator considers appropriate with re-  
40 spect to any guarantee or grant issued under this chapter.

1    **§ 305107. Operational assistance grants**

2       (a) IN GENERAL.—

3           (1) AUTHORITY.—The Administrator may make a grant to a new  
4       markets venture capital company or specialized small business invest-  
5       ment company to enable the new markets venture capital company or  
6       specialized small business investment company to provide operational  
7       assistance to smaller enterprises financed, or expected to be financed,  
8       by the new markets venture capital company or specialized small busi-  
9       ness investment company.

10          (2) TERMS.—A grant under this subsection shall be made over a  
11       multiyear period not to exceed 10 years, under such other terms as the  
12       Administrator may require.

13          (3) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—

14           (A) SUBMISSION OF PLAN.—A specialized small business invest-  
15       ment company shall be eligible for a grant under this section only  
16       if the specialized small business investment company submits to  
17       the Administrator, in such form and manner as the Administrator  
18       may require, a plan for use of the grant.

19           (B) USE OF FUNDS.—The proceeds of a grant made to a spe-  
20       cialized small business investment company under this subsection  
21       shall be used by the specialized small business investment com-  
22       pany only to provide operational assistance in connection with an  
23       equity investment made with capital raised after December 21,  
24       2000, in a smaller enterprise located in a low-income geographic  
25       area.

26          (4) GRANT AMOUNT.—

27           (A) NEW MARKETS VENTURE CAPITAL COMPANIES.—The  
28       amount of a grant made under this subsection to a new markets  
29       venture capital company shall be equal to the amount of resources  
30       (in cash or in kind) raised by the new markets venture capital  
31       company under section 305103(b)(4)(C) of this title.

32           (B) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—  
33       The amount of a grant made under this subsection to a specialized  
34       small business investment company shall be equal to the resources  
35       (in cash or in kind) raised by the entity in accordance with the  
36       requirements applicable to new markets venture capital companies  
37       under section 305103(b)(4)(C) of this title.

38          (5) PRO RATA REDUCTIONS.—If the amount made available to carry  
39       out this section is insufficient for the Administrator to provide grants  
40       in the amounts provided for in paragraph (4), the Administrator shall  
41       make pro rata reductions in the amounts otherwise payable to each new

1       markets venture capital company and specialized small business invest-  
2       ment company under that paragraph.

3       (b) SUPPLEMENTAL GRANTS.—

4           (1) IN GENERAL.—The Administrator may make a supplemental  
5       grant to a new markets venture capital company or specialized small  
6       business investment company under such terms as the Administrator  
7       may require, to provide additional operational assistance to smaller en-  
8       terprises financed, or expected to be financed, by the new markets ven-  
9       ture capital company or specialized small business investment company.

10          (2) MATCHING REQUIREMENT.—The Administrator may require, as  
11       a condition of a supplemental grant under this subsection, that the new  
12       markets venture capital company or specialized small business invest-  
13       ment company receiving the grant provide from resources (in cash or  
14       in kind), other than those provided by the Administrator, a matching  
15       contribution equal to the amount of the supplemental grant.

16       (c) LIMITATION.—None of the assistance made available under this sec-  
17       tion may be used for any overhead or general and administrative expense  
18       of a new markets venture capital company or a specialized small business  
19       investment company.

20       **§ 305108. Bank participation**

21          (a) IN GENERAL.—Except as provided in subsection (b), a national bank,  
22       a member bank of the Federal Reserve System, and (to the extent permitted  
23       under applicable State law) an insured bank that is not a member of the  
24       Federal Reserve System may invest in a new markets venture capital com-  
25       pany or in an entity established to invest solely in new markets venture cap-  
26       ital companies.

27          (b) LIMITATION.—A bank described in subsection (a) shall not make in-  
28       vestments described in that subsection in a total amount that is greater  
29       than 5 percent of the capital and surplus of the bank.

30       **§ 305109. Reporting requirement**

31       A new markets venture capital company that participates in the program  
32       shall provide the Administrator such information as the Administrator may  
33       require, including—

34          (1) information relating to the measurement criteria that the new  
35       markets venture capital company proposed in its program application;  
36       and

37          (2) in each case in which the new markets venture capital company  
38       makes, under this chapter, an investment in, or a loan or grant to, a  
39       business that is not located in a low-income geographic area, a report  
40       on the number and percentage of employees of the business who reside  
41       in a low-income geographic area.

1    **§ 305110. Regulations**

2       The Administrator may issue such regulations as the Administrator con-  
3       siders necessary to carry out this chapter.

4    **§ 305111. Unlawful acts and omissions**

5       (a) **PERSONS DEEMED TO COMMIT VIOLATION.**—If a new markets ven-  
6       ture capital company violates any provision of this subtitle (including a reg-  
7       ulation issued under this subtitle) or of a participation agreement by reason  
8       of the new markets venture capital company’s failure to comply with terms  
9       of this subtitle (including a regulation) or of the participation agreement,  
10      or by reason of the new markets venture capital company’s engaging in any  
11      act or practice that constitutes or will constitute a violation of this subtitle  
12      (including a regulation) or of the participation agreement, the violation shall  
13      also be deemed to be a violation and an unlawful act committed by any per-  
14      son that, directly or indirectly, authorizes, orders, participates in, causes,  
15      brings about, counsels, aids, or abets in the commission of the act, practice,  
16      or transaction that constitutes or will constitute, in whole or in part, the  
17      violation.

18      (b) **BREACH OF FIDUCIARY DUTY.**—It shall be unlawful for an officer,  
19      director, employee, agent, or other participant in the management or con-  
20      duct of the affairs of a new markets venture capital company to engage in  
21      any act or practice, or to omit any act or practice, in breach of the person’s  
22      fiduciary duty as officer, director, employee, agent, or participant if, as a  
23      result of the act, practice, or omission, the new markets venture capital  
24      company suffers or is in imminent danger of suffering financial loss or other  
25      damage.

26      (c) **OTHER UNLAWFUL ACTS.**—Except with the written consent of the  
27      Administrator, it shall be unlawful—

28          (1) for any person to take office as an officer, director, or employee  
29          of a new markets venture capital company, or to become an agent or  
30          participant in the conduct of the affairs or management of a new mar-  
31          kets venture capital company, if the person—

32              (A) has been convicted of—

33                  (i) a felony; or

34                  (ii) any other criminal offense involving dishonesty or  
35                  breach of trust; or

36              (B) has been found civilly liable in damages, or has been perma-  
37              nently or temporarily enjoined by an order, judgment, or decree  
38              of a court of competent jurisdiction, by reason of any act or prac-  
39              tice involving fraud or breach of trust; or

40          (2) for any person to continue to serve in any of the capacities de-  
41          scribed in paragraph (1), if—

- 1 (A) the person is convicted of—  
2 (i) a felony; or  
3 (ii) any other criminal offense involving dishonesty or  
4 breach of trust; or  
5 (B) the person is found civilly liable in damages, or is perma-  
6 nently or temporarily enjoined by an order, judgment, or decree  
7 of a court of competent jurisdiction, by reason of any act or prac-  
8 tice involving fraud or breach of trust.

9 **§ 305112. Examinations**

10 (a) IN GENERAL.—A new markets venture capital company that partici-  
11 pates in the program shall be subject to examinations made at the direction  
12 of the Investment Division of SBA in accordance with this section and mod-  
13 eled after oversight developed for the small business investment company  
14 program.

15 (b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—An examination under  
16 this section may be conducted with the assistance of a private sector entity  
17 that has both the qualifications and the expertise necessary to conduct such  
18 an examination.

19 (c) COSTS.—

20 (1) IN GENERAL.—The Administrator may assess the cost of an ex-  
21 amination under this section (including compensation of an examiner)  
22 against the new markets venture capital company examined.

23 (2) PAYMENT.—A new markets venture capital company against  
24 which the Administrator assesses costs under this paragraph shall pay  
25 the costs.

26 (d) DEPOSIT OF AMOUNTS.—Amounts collected under this section shall  
27 be deposited in the account for salaries and expenses of SBA.

28 **§ 305113. Removal or suspension of directors or officers**

29 Using the procedures for removing or suspending a director or an officer  
30 of a licensee under section 303120 of this title (to the extent that those pro-  
31 cedures are not inconsistent with the requirements of this chapter), the Ad-  
32 ministrator may remove or suspend a director or officer of a new markets  
33 venture capital company.

34 **§ 305114. Direct civil enforcement actions**

35 (a) FORFEITURE OF RIGHTS AND PRIVILEGES.—

36 (1) IN GENERAL.—With respect to a new markets venture capital  
37 company that violates or fails to comply with any of the provisions of  
38 this subtitle (including a regulation issued under this subtitle) or of  
39 any participation agreement, the Administrator may—

40 (A) void the participation agreement between the Administrator  
41 and the new markets venture capital company; and

1 (B) cause the new markets venture capital company to forfeit  
2 all of the rights and privileges derived by the new markets venture  
3 capital company from this subtitle.

4 (2) ADJUDICATION OF NONCOMPLIANCE.—

5 (A) IN GENERAL.—Before the Administrator may cause a new  
6 markets venture capital company to forfeit rights or privileges  
7 under paragraph (1), a court of the United States of competent  
8 jurisdiction shall find that the new markets venture capital com-  
9 pany committed a violation, or failed to comply, in a civil action  
10 brought for that purpose in the district, territory, or other place  
11 subject to the jurisdiction of the United States in which the prin-  
12 cipal office of the new markets venture capital company is located.

13 (B) PARTIES AUTHORIZED TO BRING CIVIL ACTION.—A civil ac-  
14 tion brought by the United States under this subsection shall be  
15 brought by the Administrator or by the Attorney General.

16 (b) INJUNCTIONS AND OTHER ORDERS.—

17 (1) IN GENERAL.—If a new markets venture capital company or any  
18 other person engages or is about to engage in an act or practice that  
19 constitutes or will constitute a violation of any provision of this subtitle  
20 (including a regulation under this subtitle) or of any order issued under  
21 this subtitle, the Administrator may bring a civil action in United  
22 States district court or in a United States court of any place subject  
23 to the jurisdiction of the United States for an order enjoining the act  
24 or practice, or for an order enforcing compliance with the provision,  
25 regulation, or order, and the court shall have jurisdiction over the civil  
26 action and, on a showing by the Administrator that the new markets  
27 venture capital company or other person has engaged or is about to  
28 engage in any such act or practice, a permanent or temporary injunc-  
29 tion, restraining order, or other order shall be granted without bond.

30 (2) JURISDICTION OVER NEW MARKETS VENTURE CAPITAL COMPANY  
31 AND ITS ASSETS.—In a civil action under paragraph (1), the court  
32 may, to such extent as the court considers necessary, take exclusive ju-  
33 risdiction of the new markets venture capital company and the assets  
34 of the new markets venture capital company, wherever located, and the  
35 court shall have jurisdiction to appoint a trustee or receiver to hold or  
36 administer the assets of the new markets venture capital company  
37 under the direction of the court.

38 (3) TRUSTEESHIP OR RECEIVERSHIP OVER NEW MARKETS VENTURE  
39 CAPITAL COMPANY.—On request of the Administrator, the court may  
40 appoint the Administrator to act as trustee or receiver of the new mar-  
41 kets venture capital company unless the court considers that such an

1 appointment would be inequitable or otherwise inappropriate by reason  
 2 of special circumstances involved in the civil action.

### 3 **Chapter 307—Renewable Fuel Capital** 4 **Investment Pilot Program**

Sec.

307101. Definitions.

307102. Establishment of program.

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307113. Removal or suspension of directors or officers.

307114. Termination.

#### 5 **§ 307101. Definitions**

6 In this chapter:

7 (1) ELIGIBLE COMPANY.—The term “eligible company” means a  
 8 company that—

9 (A) is a newly formed for-profit entity or a newly formed for-  
 10 profit subsidiary of an existing entity;

11 (B) has a management team with experience in alternative en-  
 12 ergy financing or relevant venture capital financing; and

13 (C) has a primary objective of investment in smaller enterprises  
 14 that research, manufacture, develop, produce, or bring to market  
 15 goods, products, or services that generate or support the produc-  
 16 tion of renewable energy.

17 (2) OPERATIONAL ASSISTANCE.—The term “operational assistance”  
 18 means management, marketing, and other technical assistance that as-  
 19 sists a smaller enterprise with business development.

20 (3) PARTICIPATION AGREEMENT.—The term “participation agree-  
 21 ment” means a participation agreement under section 307103(b)(4)(D)  
 22 of this title.

23 (4) PROGRAM.—The term “program” means the renewable fuel cap-  
 24 ital investment pilot program.

25 (5) RENEWABLE ENERGY.—The term “renewable energy” means en-  
 26 ergy derived from resources that are regenerative or that cannot be de-  
 27 pleted, including solar, wind, ethanol, and biodiesel fuels.

28 (6) RENEWABLE FUEL CAPITAL INVESTMENT COMPANY.—The term  
 29 “renewable fuel capital investment company” means a company—

30 (A) that—

1 (i) has been granted final approval by the Administrator  
2 under section 307103(e) of this title; and

3 (ii) has entered into a participation agreement with the Ad-  
4 ministrator; or

5 (B) that has received conditional approval under section  
6 307103(b) of this title.

7 (7) STATE.—The term “State” means a State, the District of Co-  
8 lumbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the  
9 Northern Mariana Islands, and any other commonwealth, territory, or  
10 possession of the United States.

11 (8) VENTURE CAPITAL.—The term “venture capital” means capital  
12 in the form of equity capital (as defined in section 303104(g)(1)(B) of  
13 this title) investments.

14 **§ 307102. Establishment of program**

15 (a) IN GENERAL.—The Administrator shall establish a renewable fuel  
16 capital investment program—

17 (1) with the purpose of promoting the research, development, manu-  
18 facture, production, and bringing to market of goods, products, or serv-  
19 ices that generate or support the production of renewable energy by en-  
20 couraging venture capital investments in smaller enterprises primarily  
21 engaged such activities; and

22 (2) with the mission of addressing the unmet equity investment  
23 needs of smaller enterprises engaged in researching, developing, manu-  
24 facturing, producing, and bringing to market goods, products, or serv-  
25 ices that generate or support the production of renewable energy.

26 (b) ACTIVITIES.—Under the program, the Administrator may—

27 (1) enter into participation agreements with renewable fuel capital  
28 investment companies under section 307103(b)(4)(D) of this title for  
29 the purposes described in subsection (a);

30 (2) guarantee debentures issued by renewable fuel capital investment  
31 companies under section 307104 of this title; and

32 (3) make grants to renewable fuel investment capital companies  
33 under section 307107 of this title.

34 **§ 307103. Approval of renewable fuel capital investment**  
35 **companies**

36 (a) APPLICATION.—An eligible company desiring to be designated as a re-  
37 newable fuel capital investment company shall submit to the Administrator  
38 an application that includes—

39 (1) a business plan describing how the applicant intends to make  
40 successful venture capital investments in smaller enterprises primarily  
41 engaged in the research, manufacture, development, production, or



bringing to market of goods, products, or services that generate or support the production of renewable energy;

(2) information regarding the relevant venture capital qualifications and general reputation of the applicant's management;

(3) a description of how the applicant intends to seek to address the unmet capital needs of the smaller enterprises served;

(4) a proposal describing how the applicant intends to use the grant funds provided under this chapter to provide operational assistance to smaller enterprises financed by the applicant, including information regarding whether the applicant has employees with appropriate professional licenses or will contract with another entity when the services of such an individual are necessary;

(5) with respect to binding commitments to be made to the applicant under this chapter, an estimate of the ratio of cash to in-kind contributions;

(6) a description of whether and to what extent the applicant meets the criteria under subsection (b)(2) and the objectives of the program;

(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the applicant's business plan; and

(8) such other information as the Administrator may require.

(b) CONDITIONAL APPROVAL.—

(1) IN GENERAL.—From among eligible companies submitting applications under subsection (a), the Administrator shall conditionally approve applicants to operate as renewable fuel capital investment companies.

(2) SELECTION CRITERIA.—In conditionally approving companies under paragraph (1), the Administrator shall consider—

(A) the likelihood that an applicant will meet the goal of its business plan;

(B) the experience and background of an applicant's management team;

(C) the need for venture capital investments in the geographic areas in which an applicant intends to invest;

(D) the extent to which an applicant will concentrate its activities on serving the geographic areas in which the applicant intends to invest;

(E) the likelihood that an applicant will be able to satisfy the conditions under paragraph (4);

(F) the extent to which the activities proposed by the applicant will expand economic opportunities in the geographic areas in which the company intends to invest;

(G) the strength of the applicant's proposal to provide operational assistance as the proposal relates to the ability of the applicant to meet applicable cash requirements and properly use in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by employees or by contractors; and

(H) any other factor that the Administrator considers appropriate.

(3) NATIONWIDE DISTRIBUTION.—From among eligible companies submitting applications under subsection (a), the Administrator shall consider the selection criteria under paragraph (2) and shall, to the maximum extent practicable, approve at least 1 applicant from each geographic SBA region.

(4) REQUIREMENTS FOR FINAL APPROVAL.—

(A) IN GENERAL.—On granting conditional approval of an applicant, the Administrator shall grant each conditionally approved applicant 2 years to satisfy the requirements stated in this paragraph.

(B) CAPITAL REQUIREMENT.—A conditionally approved applicant shall raise not less than \$3,000,000 of private capital or binding capital commitments from 1 or more investors (other than Federal agencies) that meet criteria established by the Administrator.

(C) RESOURCES FOR OPERATIONAL ASSISTANCE FROM OTHERS THAN THE ADMINISTRATOR.—

(i) IN GENERAL.—To provide operational assistance to smaller enterprises expected to be financed by the applicant, a conditionally approved applicant shall have binding commitments (for contribution in cash or in-kind)—

(I) from any source other than the Administrator that meet criteria established by the Administrator; and

(II) payable or available over a multiyear period that the Administrator considers appropriate (not to exceed 10 years).

(ii) EXCEPTION.—On a showing of special circumstances and good cause, the Administrator may consider an applicant to satisfy the requirements of clause (i) if the applicant has—

(I) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under clause (i); and

(II) binding commitments in an amount that is equal to not less than 20 percent of the amount required under clause (i).

(iii) LIMITATION.—To comply with the requirements of clauses (i) and (ii), the amount of in-kind contributions made by a conditionally approved applicant shall not exceed 50 percent of the total contributions made by the conditionally approved applicant.

(D) PARTICIPATION AGREEMENT.—A conditionally approved applicant shall enter into a participation agreement with the Administrator that—

(i) details the conditionally approved applicant's operating plan and investment criteria; and

(ii) requires the conditionally approved applicant, after final approval under subsection (c), to make investments in smaller enterprises primarily engaged in researching, manufacturing, developing, producing, or bringing to market goods, products, or services that generate or support the production of renewable energy.

(c) FINAL APPROVAL.—The Administrator shall, with respect to each applicant conditionally approved under subsection (c)—

(1) grant final approval to the conditionally approved applicant to operate as a renewable fuel capital investment company if the conditionally approved applicant satisfies the requirements of paragraph (4) of subsection (b) on or before the expiration of the time period described in that subsection; or

(2) if the conditionally approved applicant fails to satisfy those requirements on or before the expiration of that time period, revoke the conditional approval granted under subsection (b).

**§ 307104. Guarantee of renewable fuel capital investment company debentures**

(a) IN GENERAL.—To enable a renewable fuel capital investment company to make venture capital investments in smaller enterprises engaged in the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy, the Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by the renewable fuel capital investment company.

(b) TERMS AND CONDITIONS.—The Administrator may make a guarantee under this section on such terms and conditions as the Administrator considers appropriate, except that—

(1) the term of any debenture guaranteed under this section shall not exceed 15 years; and

(2) a debenture guaranteed under this section—

(A) shall carry no front-end or annual fees;

(B) shall be issued at a discount;

(C) shall require no interest payments during the 5-year period beginning on the date on which the debenture is issued;

(D) shall be prepayable without penalty after the end of the 1-year period beginning on the date on which the debenture is issued; and

(E) shall require semiannual interest payments after the period described in subparagraph (C).

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this chapter.

(d) MAXIMUM AMOUNT OF GUARANTEE.—

(1) IN GENERAL.—The Administrator may guarantee the debentures issued by a renewable fuel capital investment company only to the extent that the total face amount of outstanding guaranteed debentures of the renewable fuel capital investment company does not exceed 150 percent of the private capital of the renewable fuel capital investment company, as determined by the Administrator.

(2) TREATMENT OF CERTAIN FEDERAL FUNDS.—For purposes of paragraph (1), private capital may include capital that is considered to be Federal funds (within the meaning of section 301101(16)(C)(iii) of this title) if the capital is contributed by an investor other than a Federal agency.

### **§ 307105. Trust certificates**

(a) ISSUANCE.—

(1) IN GENERAL.—The Administrator, acting directly or through an agent, may issue trust certificates representing ownership of all or a fractional part of debentures issued by a renewable fuel capital investment company and guaranteed by the Administrator under section 307104 of this title.

(2) TRUST OR POOL.—Trust certificates issued under paragraph (1) shall be based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) GUARANTEE.—

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1 (1) IN GENERAL.—The Administrator may, under such terms and  
2 conditions as the Administrator considers appropriate, guarantee the  
3 timely payment of the principal of and interest on trust certificates is-  
4 sued by the Administrator or an agent of the Administrator under this  
5 section.

6 (2) LIMITATION.—A guarantee under this subsection shall be limited  
7 to the extent of principal and interest on the guaranteed debentures  
8 that compose the trust or pool.

9 (3) PREPAYMENT OR DEFAULT.—

10 (A) IN GENERAL.—In the event that a debenture in a trust or  
11 pool is prepaid, or in the event of default of such a debenture, the  
12 guarantee of timely payment of principal and interest on the trust  
13 certificates shall be reduced in proportion to the amount of prin-  
14 cipal and interest that the prepaid debenture represents in the  
15 trust or pool.

16 (B) INTEREST PERIOD.—Interest on a prepaid or defaulted de-  
17 benture shall accrue and be guaranteed by the Administrator only  
18 through the date of payment of the guarantee.

19 (C) CALL.—At any time during the term of a trust certificate,  
20 a trust certificate may be called for redemption due to prepayment  
21 or default of all debentures that compose the trust or pool.

22 (e) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith  
23 and credit of the United States is pledged to pay all amounts that may be  
24 required to be paid under any guarantee of a trust certificate issued by the  
25 Administrator or an agent of the Administrator under this section.

26 (d) FEES.—The Administrator shall not collect a fee for any guarantee  
27 of a trust certificate under this section, but an agent of the Administrator  
28 may collect a fee approved by the Administrator for the functions described  
29 in subsection (f)(2).

30 (e) SUBROGATION AND OWNERSHIP RIGHTS.—

31 (1) SUBROGATION.—If the Administrator pays a claim under a guar-  
32 antee issued under this section, the Administrator shall be subrogated  
33 fully to the rights satisfied by the payment.

34 (2) OWNERSHIP RIGHTS.—No Federal, State, or local law shall pre-  
35 clude or limit the exercise by the Administrator of the ownership rights  
36 of the Administrator in the debentures residing in a trust or pool  
37 against which trust certificates are issued under this section.

38 (f) MANAGEMENT AND ADMINISTRATION.—

39 (1) REGISTRATION.—The Administrator may provide for a central  
40 registration of all trust certificates issued under this section.

41 (2) CONTRACTING OF FUNCTIONS.—

(A) IN GENERAL.—The Administrator may contract with 1 or more agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section including, notwithstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under section 307104 of this title; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) FIDELITY BOND OR INSURANCE REQUIREMENT.—An agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates issued under this section.

(4) FORM OF REGISTRATION.—This subsection does not preclude the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

### **§ 307106. Fees**

(a) IN GENERAL.—Except as provided in section 307105(d) of this title, the Administrator may charge such fees as the Administrator considers appropriate with respect to any guarantee or grant issued under this chapter, in an amount established annually by the Administrator, as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and guaranteeing debentures under this chapter, which amounts shall be paid to and retained by the Administrator.

(b) OFFSET.—The Administrator may, as provided by subsection (c), offset fees charged and collected under subsection (a).

(c) FEE CONTRIBUTION.—

(1) IN GENERAL.—To the extent that amounts are made available to the Administrator for the purpose of fee contributions, the Administrator shall contribute to fees paid by the renewable fuel capital investment companies under subsection (a).

(2) ANNUAL ADJUSTMENT.—Each fee contribution under paragraph (1) shall be effective for 1 fiscal year and shall be adjusted as necessary for each fiscal year thereafter to ensure that amounts under

paragraph (1) are fully used. The fee contribution for a fiscal year shall be based on the outstanding commitments made and the guarantees and grants that the Administrator projects will be made during the fiscal year, given the program level authorized by law for that fiscal year and any other factors that the Administrator considers appropriate.

**§ 307107. Operational assistance grants**

(a) IN GENERAL.—

(1) AUTHORITY.—The Administrator may make a grant to a renewable fuel capital investment company to enable the renewable fuel capital investment company to provide operational assistance to smaller enterprises financed, or expected to be financed, by the renewable fuel capital investment company.

(2) TERMS.—A grant under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) GRANT AMOUNT.—The amount of a grant made under this subsection to a renewable fuel capital investment company shall be equal to the lesser of—

(A) 10 percent of the resources (in cash or in kind) raised by the renewable fuel capital investment company under section 307103(b)(4)(B) of this title; or

(B) \$1,000,000.

(4) PRO RATA REDUCTIONS.—If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (3), the Administrator shall make pro rata reductions in the amounts otherwise payable to each renewable fuel capital investment company under that paragraph.

(5) GRANTS TO CONDITIONALLY APPROVED COMPANIES.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), on the request of a renewable fuel capital investment company conditionally approved under section 307103(b) of this title, the Administrator shall make a grant to the renewable fuel capital investment company under this subsection.

(B) REPAYMENT BY RENEWABLE FUEL CAPITAL INVESTMENT COMPANIES NOT FINALLY APPROVED.—If a renewable fuel capital investment company receives a grant under this paragraph and does not enter into a participation agreement for final approval, the renewable fuel capital investment company shall, subject to controlling Federal law, repay the amount of the grant to the Administrator.

(C) DEDUCTION OF GRANT TO APPROVED COMPANY.—If a renewable fuel capital investment company receives a grant under this paragraph and receives final approval under section 307103(c) of this title, the Administrator shall deduct the amount of the grant from the total grant amount that the renewable fuel capital investment company receives for operational assistance.

(D) AMOUNT OF GRANT.—No renewable fuel capital investment company may receive a grant of more than \$100,000 under this paragraph.

(b) SUPPLEMENTAL GRANTS.—

(1) IN GENERAL.—The Administrator may make a supplemental grant to a renewable fuel capital investment company under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the renewable fuel capital investment company.

(2) MATCHING REQUIREMENT.—The Administrator may require, as a condition of a supplemental grant under this subsection, that the renewable fuel capital investment company receiving the grant provide from resources (in cash or in kind), other than those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) LIMITATION.—None of the assistance made available under this section may be used for any overhead or general and administrative expense of a renewable fuel capital investment company.

**§ 307108. Bank participation**

(a) IN GENERAL.—Except as provided in subsection (b), a national bank, a member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) an insured bank that is not a member of the Federal Reserve System may invest in any renewable fuel capital investment company or in any entity established to invest solely in renewable fuel capital investment companies.

(b) LIMITATION.—A bank described in subsection (a) shall not make investments described in that subsection in a total amount that is greater than 5 percent of the capital and surplus of the bank.

**§ 307109. Reporting requirement**

A renewable fuel capital investment company that participates in the program shall provide the Administrator such information as the Administrator may require, including—

(1) information relating to the measurement criteria that the renewable fuel capital investment company proposed in its program application; and



(2) in each case in which the renewable fuel capital investment company makes, under this chapter, an investment in, or a loan or a grant to, a business that is not primarily engaged in the research, development, manufacture, or bringing to market or renewable energy sources, a report on the nature, origin, and revenues of the business in which investments are made.

7     **§ 307110. Regulations**

8       The Administrator may issue such regulations as the Administrator con-  
9       siders necessary to carry out this chapter.

10     **§ 307111. Examinations**

(a) IN GENERAL.—A renewable fuel capital investment company that participates in the program shall be subject to examinations made at the direction of the Investment Division of SBA in accordance with this section and modeled after oversight developed for the small business investment company program.

(b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—An examination under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such an examination.

20 (c) COSTS.—

(1) IN GENERAL.—The Administrator may assess the cost of an examination under this section (including compensation of an examiner) against the renewable fuel capital investment company examined.

(2) PAYMENT.—A renewable fuel capital investment company against which the Administrator assesses costs under this paragraph shall pay the costs.

(d) DEPOSIT OF AMOUNTS.—Amounts collected under this section shall be deposited in the account for salaries and expenses of SBA.

29     **§ 307112. Conflicts of interest; unlawful acts and omissions;**  
30             **revocation and suspensions of licenses; cease and**  
31             **desist orders; injunctions and other orders**

(a) ACTIONS AND PROCEDURES UNDER OTHER PROVISIONS.—To the extent that the actions and procedures described in sections 303113, 303117, 303119, and 303121(b) of this title are not inconsistent with the requirements of this chapter, the Administrator may take those actions under those procedures in carrying out this chapter.

(b) APPLICABILITY OF REQUIREMENTS UNDER OTHER PROVISIONS.—To the extent that the requirements described in sections 303113, 303117, 303119, and 303121(b) of this title are not inconsistent with the requirements of this chapter, an officer, director, employee, agent, or other participant in the management or conduct of the affairs of a renewable fuel capital

1 investment company shall be subject to the requirements of sections  
2 303113, 303117, 303119, and 303121(b) of this title.

3 **§ 307113. Removal or suspension of directors or officers**

4 Using the procedures for removing or suspending a director or an officer  
5 of a licensee under section 303120 of this title (to the extent that those pro-  
6 cedures are not inconsistent with the requirements of this chapter), the Ad-  
7 ministrator may remove or suspend a director or officer of a renewable fuel  
8 capital investment company.

9 **§ 307114. Termination**

10 The program shall terminate at the end of the 2d full fiscal year after  
11 the date on which the Administrator establishes the program.

12 **Division C—Surety Bond Guarantee**  
13 **Program**

14 **Chapter 321—Surety Bond Guarantee**  
15 **Program**

Sec.

321101. Definitions.

321102. Surety bond guarantees and indemnification agreements.

321103. Surety bond guarantee fund.

16 **§ 321101. Definitions**

17 In this chapter:

18 (1) BID BOND.—The term “bid bond” means a bond conditioned on  
19 the bidder on a contract—

20 (A) entering into the contract, if the bidder receives the award  
21 of the contract; and

22 (B) furnishing the prescribed payment bond and performance  
23 bond.

24 (2) BOND.—Except in paragraphs (1), (7), and (8), the term “bond”  
25 means—

26 (A) a bid bond;

27 (B) a payment bond;

28 (C) a performance bond; and

29 (D) a bond that is ancillary to a bid bond, payment bond, or  
30 performance bond.

31 (3) GUARANTEE.—The term “guarantee” means a guarantee of a  
32 bond issued under section 321102(a) of this title.

33 (4) INDEMNIFICATION AGREEMENT.—The term “indemnification  
34 agreement” means an agreement entered into between the Adminis-  
35 trator and a participating surety under section 321102(b) of this title.

36 (5) OBLIGEE.—The term “obligee” means—

37 (A) in the case of a bid bond, the person requesting bids for  
38 the performance of a contract; or

1 (B) in the case of a payment bond or performance bond, the  
2 person that has contracted with a principal for the completion of  
3 the contract and to which the obligation of the surety runs in the  
4 event of a breach by the principal of a condition of a payment  
5 bond or performance bond.

6 (6) PARTICIPATING SURETY.—

7 (A) IN GENERAL.—The term “participating surety” means a  
8 surety to which a guarantee or commitment to guarantee is issued  
9 under section 321102(a)(1) of this title.

10 (B) INCLUSION.—The term “participating surety” includes a  
11 preferred surety.

12 (7) PAYMENT BOND.—The term “payment bond” means a bond con-  
13 ditioned on the payment by the principal of money to persons under  
14 contract with the principal.

15 (8) PERFORMANCE BOND.—The term “performance bond” means a  
16 bond conditioned on the completion by the principal of a contract in  
17 accordance with the terms of the contract.

18 (9) PREFERRED SURETY.—The term “preferred surety” means a  
19 participating surety that is a participant in the preferred surety bond  
20 guarantee program.

21 (10) PREFERRED SURETY BOND GUARANTEE PROGRAM.—The term  
22 “preferred surety bond guarantee program” means the program under  
23 section 321102(a)(4) of this title.

24 (11) PRIME CONTRACTOR.—The term “prime contractor” means the  
25 person with whom the obligee has contracted to perform the contract.

26 (12) PRINCIPAL.—

27 (A) IN GENERAL.—The term “principal” means—

28 (i) in the case of a bid bond, a person that bids for the  
29 award of a contract; or

30 (ii) the person—

31 (I) that is primarily liable to complete a contract for  
32 the obligee or to make a payment to another person in  
33 respect of the contract; and

34 (II) for whose performance of the person’s obligation  
35 the surety is bound under the terms of a payment bond  
36 or performance bond.

37 (B) PRIME CONTRACTOR OR SUBCONTRACTOR.—A principal  
38 may be a prime contractor or a subcontractor.

39 (13) PROGRAM.—The term “program” means the surety bond guar-  
40 antee program.

(14) SUBCONTRACTOR.—The term “subcontractor” means a person that contracts with a prime contractor or with another subcontractor to perform a contract.

(15) SURETY.—The term “surety” means a person that—

(A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee if the principal breaches the conditions of the bond;

(B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract if the principal breaches the conditions of the contract;

(C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment; or

(D) is an agent, independent agent, underwriter, or any other person authorized to act on behalf of a person described in subparagraph (A), (B), or (C).

**§ 321102. Surety bond guarantees and indemnification agreements**

(a) GUARANTEE OF SURETY AGAINST LOSS FROM PRINCIPAL’S BREACH OF BOND.—

(1) IN GENERAL.—The Administrator may, on such terms and conditions as the Administrator may prescribe, guarantee and enter into commitments to guarantee a surety against loss resulting from a breach of the terms of a bond by a principal on any total work order or contract amount that at the time of bond execution does not exceed \$5,000,000.

(2) TERMS AND CONDITIONS.—The terms and conditions of guarantees and commitments under paragraph (1) may vary from surety to surety on the basis of the Administrator’s experience with the particular surety.

(3) ELIGIBILITY.—A guarantee of a bond shall not be issued under paragraph (1) unless—

(A) the person that would be principal under the bond is a small business concern;

(B) the bond is required for the person to bid on a contract or to serve as a prime contractor or subcontractor on a contract;

(C) the person is not able to obtain the bond on reasonable terms and conditions without a guarantee under this section; and

1 (D)(i) there is a reasonable expectation that the principal will  
2 perform the covenants and conditions of the contract with respect  
3 to which the bond is required; and

4 (ii) the terms and conditions of the bond are reasonable in the  
5 light of the risks involved and the extent of the surety's participa-  
6 tion.

7 (4) PREFERRED SURETY BOND GUARANTEE PROGRAM.—

8 (A) IN GENERAL.—The Administrator may authorize a surety,  
9 without further approval by the Administrator, to issue, monitor,  
10 and service bonds that are subject to a guarantee under paragraph  
11 (1).

12 (B) ACTION BY THE ADMINISTRATOR.—The Administrator shall  
13 promptly act on an application from a surety to participate in the  
14 preferred surety bond guarantee program, in accordance with cri-  
15 teria and procedures established in regulations under subsection  
16 (d).

17 (C) REDUCTION OF ALLOTMENT; TERMINATION.—The Adminis-  
18 trator may reduce the allotment of bond guarantee authority or  
19 terminate the participation of a preferred surety based on the rate  
20 of participation of the preferred surety during the 4 most recent  
21 fiscal year quarters compared with the median rate of participa-  
22 tion by the other preferred sureties.

23 (b) INDEMNIFICATION OF PARTICIPATING SURETY AGAINST LOSS FROM  
24 AVOIDING BREACH.—

25 (1) IN GENERAL.—In connection with the issuance of a guarantee  
26 to a surety, the Administrator may enter into an indemnification agree-  
27 ment with a participating surety to indemnify the participating surety  
28 against a loss sustained by the participating surety in avoiding or at-  
29 tempting to avoid a breach of the terms of a bond guaranteed by the  
30 Administrator under subsection (a).

31 (2) DETERMINATION.—Before making any payment under this sub-  
32 section, the Administrator shall determine that a breach of the terms  
33 of the bond was imminent.

34 (3) APPROVAL.—A participating surety shall obtain approval from  
35 the Administrator before making any payments under this subsection  
36 unless the participating surety is a preferred surety.

37 (4) LIMITATION ON AMOUNT OF PAYMENT.—

38 (A) IN GENERAL.—Subject to subparagraph (B), no payment by  
39 the Administrator under this subsection shall exceed 10 percent of  
40 the contract price unless the Administrator determines that a  
41 greater payment should be made as a result of a finding by the

1 Administrator that the participating surety's loss sustained in  
2 avoiding or attempting to avoid the breach was necessary and rea-  
3 sonable.

4 (B) MAXIMUM AMOUNT.—In no event shall the Administrator  
5 pay a participating surety under this subsection an amount ex-  
6 ceeding the guaranteed share of the bond available to the partici-  
7 pating surety under subsection (a).

8 (c) AMOUNT OF LIABILITY OF THE ADMINISTRATOR.—A guarantee or in-  
9 demnification agreement shall obligate the Administrator to pay to the par-  
10 ticipating surety—

11 (1) in the case of a preferred surety, an amount not to exceed 70  
12 percent of the amount of the loss incurred and paid by the preferred  
13 surety; or

14 (2) in the case of a participating surety other than a preferred sur-  
15 ety—

16 (A) an amount not to exceed 90 percent of the amount of the  
17 loss incurred and paid by the participating surety (but in no event  
18 may the Administrator make a duplicate payment under sub-  
19 section (b) or any other provision of this section); or

20 (B) the amount that is equal to 90 percent of the loss incurred  
21 and paid by the participating surety, if—

22 (i) the total amount of the contract at the time of execution  
23 of the bond or bonds is \$100,000 or less; or

24 (ii) the bond was issued to a small business concern owned  
25 and controlled by socially and economically disadvantaged in-  
26 dividuals or to a qualified HUBZone small business concern.

27 (d) REGULATIONS.—

28 (1) IN GENERAL.—The Administrator may prescribe regulations for  
29 participating sureties.

30 (2) CONTENTS.—The regulations under paragraph (1) shall require  
31 a participating surety to meet standards established by the Adminis-  
32 trator for underwriting, claim practices, and loss ratios.

33 (e) REIMBURSEMENT OF SURETY.—

34 (1) IN GENERAL.—Except as provided in paragraph (2), the Admin-  
35 istrator shall reimburse a participating surety as provided in a guaran-  
36 tee or indemnification agreement.

37 (2) NO LIABILITY.—The Administrator shall be relieved of all liabil-  
38 ity under a guarantee or indemnification agreement if—

39 (A) the participating surety obtained the guarantee or indem-  
40 nification agreement, or applied for reimbursement, by fraud or  
41 material misrepresentation;

1 (B) the total contract amount at the time of execution of the  
2 bond or bonds exceeds \$2,000,000;

3 (C) the participating surety has breached a material term or  
4 condition of the guarantee or indemnification agreement; or

5 (D) the participating surety has substantially violated the regu-  
6 lations prescribed under subsection (d).

7 (f) REIMBURSEMENT PROCEDURE.—The Administrator may, on such  
8 terms and conditions as the Administrator may prescribe, establish a proce-  
9 dure for reimbursing a participating surety for the paid losses of the partici-  
10 pating surety billed each month, based on prior monthly payments to the  
11 participating surety, with subsequent adjustments after such reimburse-  
12 ment.

13 (g) REPORTING BY PARTICIPATING SURETIES; AUDITS.—

14 (1) REPORTING BY PARTICIPATING SURETIES.—A participating sur-  
15 ety shall submit reports to the Administrator at such times and in such  
16 form as the Administrator may require.

17 (2) AUDITS.—

18 (A) IN GENERAL.—The Administrator may at all reasonable  
19 times audit, in the offices of a participating surety, all records rel-  
20 evant to SBA's guarantee, commitments to guarantee, and indem-  
21 nification agreements issued to or entered into with the participat-  
22 ing surety under this section.

23 (B) PREFERRED SURETY BOND GUARANTEE PROGRAM PARTICI-  
24 PANTS.—A preferred surety shall be audited at least once every  
25 3 years by examiners selected and approved by the Administrator.

26 (h) ADMINISTRATIVE PROVISIONS.—The Administrator shall—

27 (1) administer the program on a prudent and economically justifiable  
28 basis; and

29 (2) establish such fees for small business concerns and premiums for  
30 participating sureties as the Administrator considers reasonable and  
31 necessary, to be payable at such times and under such conditions as  
32 the Administrator may determine.

33 **§ 321103. Surety bond guarantee fund**

34 (a) IN GENERAL.—There is created in the Treasury a separate fund for  
35 guarantees, which shall be available to the Administrator without fiscal year  
36 limitation as a revolving fund for the purposes of the program.

37 (b) DEPOSIT OF AMOUNTS RECEIVED BY THE ADMINISTRATOR.—All  
38 amounts received by the Administrator (including any money, property, or  
39 assets derived by the Administrator from operations in connection with the  
40 program) shall be deposited in the fund.

1 (c) USE OF FUND.—All expenses and payments, excluding administrative  
 2 expenses, pursuant to operations of the Administrator under the program  
 3 shall be paid from the fund.

4 (d) APPROPRIATIONS.—Such sums as may be appropriated to the Fund  
 5 to carry out the programs authorized by this chapter shall be without fiscal  
 6 year limitation.

7 **Division D—Certified Development**  
 8 **Company Program**  
 9 **Chapter 331—Certified Development**  
 10 **Company Program**

Sec.

331101. Definitions.

331102. Establishment of program.

331103. Debenture guarantees.

331104. Private debenture sales.

331105. Pooling of debentures.

331106. Prohibition of acceptance of funding with certain conditions, priorities, restrictions,  
 or requirements.

331107. Accredited lenders program.

331108. Premier certified lenders program.

331109. Foreclosure and liquidation of loans.

11 **§ 331101. Definitions**

12 In this chapter:

13 (1) ACCREDITED LENDER.—The term “accredited lender” means a  
 14 qualified development company that is designated as an accredited  
 15 lender under section 331107 of this title.

16 (2) CERTIFIED DEVELOPMENT COMPANY.—The term “certified de-  
 17 velopment company” means a qualified development company that the  
 18 Administrator certifies as meeting criteria established under this chap-  
 19 ter to receive assistance under the program.

20 (3) COMMERCIAL LOAN.—The term “commercial loan” means a loan  
 21 from a private source.

22 (4) DEVELOPMENT COMPANY.—The term “development company”  
 23 means an enterprise that is incorporated under State law with the au-  
 24 thority to promote and assist the growth and development of small  
 25 business concerns in the area covered by the operations of the enter-  
 26 prise.

27 (5) GUARANTEED DEBENTURE.—The term “guaranteed debenture”  
 28 means a debenture that is guaranteed by the Administrator under the  
 29 program.

30 (6) PREMIER CERTIFIED LENDER.—The term “premier certified  
 31 lender” means a certified development company that is designated as  
 32 a premier certified lender under section 331108 of this title.

33 (7) PROGRAM.—The term “program” means the certified develop-  
 34 ment company program.



(8) PROJECT.—The term “project” means a project described in section 331103(a)(1) of this title.

(9) QUALIFIED DEVELOPMENT COMPANY.—

(A) IN GENERAL.—The term “qualified development company” means a development company that, as determined by the Administrator, has—

(i) a full-time professional staff;

(ii) professional management ability (including adequate accounting, legal, and business-servicing abilities); and

(iii) a board of directors, or membership, that meets on a regular basis to make management decisions for the development company, including decisions relating to the making and servicing of loans by the development company.

(B) DEVELOPMENT COMPANIES IN A RURAL AREA.—A development company in a rural area that does not satisfy the requirements of clauses (i) and (ii) of subparagraph (A) shall be deemed to satisfy those requirements if the development company contracts with a certified development company that does satisfy those requirements and is located in the same general area to provide the services described in those clauses.

(10) SMALL MANUFACTURER.—The term “small manufacturer” means a small business concern—

(A) the primary business of which is classified in sector 31, 32, or 33 of the North American Industry Classification System; and

(B) all of the production facilities of which are located in the United States.

### **§ 331102. Establishment of program**

There is established within SBA a certified development company program for the purpose of fostering economic development and creating and preserving job opportunities in both urban and rural areas by providing long-term financing for small business concerns.

### **§ 331103. Debenture guarantees**

(a) IN GENERAL.—

(1) AUTHORITY.—The Administrator may guarantee the timely payment of all principal and interest as scheduled on a debenture issued by a certified development company the proceeds of which are used to make a loan to a small business concern to be used for a project for a sound business purpose, approved by the Administrator, of plant acquisition, construction, conversion, or expansion (including land acquisition).

(2) LIMITATION.—The Administrator shall not guarantee a debenture for the purposes of making a loan described in paragraph (1) unless necessary funds for making the loan are not available to the certified development company from a private source on reasonable terms.

(3) TERMS AND CONDITIONS.—A debenture guarantee may be made on such terms and conditions as the Administrator may by regulation determine to be appropriate.

(4) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to the payment of all amounts guaranteed under this subsection.

(5) SUBORDINATION.—A guaranteed debenture may be subordinated by the Administrator to any other debenture, promissory note, or other debt or obligation of the certified development company that issues the debenture.

(b) ELIGIBILITY FOR ASSISTANCE.—

(1) ECONOMIC DEVELOPMENT OBJECTIVES.—

(A) DEFINITIONS.—In subclauses (IX) and (X) of subparagraph (B)(iii), terms have the meanings given the terms under the Leadership in Energy and Environmental Design standard for green building certification, as determined by the Administrator.

(B) ELIGIBILITY.—To be eligible for assistance under the program, a certified development company shall demonstrate that the project to be funded with the proceeds of a guaranteed debenture is directed toward at least 1 of the following economic development objectives:

(i) JOB CREATION OR RETENTION OBJECTIVE.—The creation of job opportunities within 2 years after completion of the project, or the retention of jobs attributable to the project, as provided in paragraph (3).

(ii) COMMUNITY ECONOMIC IMPROVEMENT OBJECTIVE.—Improvement of the economy of the local community, such as stimulating other business development in the community, bringing new income into the area, or assisting the community in diversifying and stabilizing its economy.

(iii) PUBLIC POLICY OBJECTIVE.—The achievement of 1 or more of the following public policy objectives:

(I) Business district revitalization.

(II) Expansion of exports.

(III) Expansion of minority business development or women-owned business development.

(IV) Rural development.

(V) Expansion of small business concerns owned and controlled by veterans, especially small business concerns owned and controlled by service-disabled veterans.

(VI) Enhancement of economic competition, including the advancement of technology, plan retooling, conversion to robotics, and competition with imports.

(VII) Changes necessitated by Federal budget cutbacks, including cutbacks in defense-related industries.

(VIII) Business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees.

(IX) Reduction of energy consumption by at least 10 percent.

(X) Increased use of sustainable design, including—

(aa) designs that reduce the use of greenhouse gas emitting fossil fuels; and

(bb) low-impact designs to produce buildings that reduce the use of nonrenewable resources and minimize environmental impact.

(XI) Plant, equipment, and process upgrades of renewable energy sources such as—

(aa) the small-scale production of energy for individual buildings or communities consumption, commonly known as micropower; and

(bb) renewable fuels producers, including biodiesel and ethanol producers.

(XII) Reduction of rates of unemployment in labor surplus areas, as those areas are determined by the Secretary of Labor.

(2) COMMUNITY ECONOMIC IMPROVEMENT OBJECTIVE; PUBLIC POLICY OBJECTIVE.—If eligibility is based on the criteria stated in clause (ii) or (iii) of paragraph (1)(B), the project need not meet the job creation or job preservation criteria developed by the Administrator if the overall portfolio of the development company meets or exceeds those job creation or retention criteria.

(3) JOB CREATION OR RETENTION OBJECTIVE.—

(A) PROJECT STANDARD.—A project meets the job creation or retention objective under paragraph (1)(B)(i) if the project creates or retains—

(i) 1 job for every \$65,000 guaranteed by the Administrator; or

1 (ii) in the case of a project of a small manufacturer, 1 job  
2 for every \$100,000 guaranteed by the Administrator.

3 (B) PORTFOLIO STANDARD.—A project need not meet the  
4 project standard under subparagraph (A) if—

5 (i) eligibility of the project is based on the community eco-  
6 nomic improvement objective under paragraph (1)(B)(ii) or 1  
7 or more of the public policy objectives under paragraph  
8 (1)(B)(iii); and

9 (ii) after the loan is made for the project, the certified de-  
10 velopment company's portfolio of outstanding guaranteed de-  
11 bentures, excluding guaranteed debentures for loans to small  
12 manufacturers, creates or retains—

13 (I) 1 job for every \$65,000 guaranteed by the Admin-  
14 istrator; or

15 (II) in the case of a project in Alaska, Hawaii, a  
16 State-designated enterprise zone, an empowerment zone,  
17 an enterprise community, or labor surplus area, as deter-  
18 mined by the Secretary of Labor, or in any other area  
19 designated by the Administrator, 1 job for every \$75,000  
20 guaranteed by the Administrator.

21 (4) WAIVER OF REQUIREMENTS.—

22 (A) IN GENERAL.—Under regulations prescribed by the Admin-  
23 istrator, the Administrator may waive, on a case-by-case basis or  
24 by regulation, any requirement of paragraph (3) (other than the  
25 requirement that a calculation under paragraph (3)(B)(ii)(II) ex-  
26 clude debentures for loans to small manufacturers).

27 (B) DOLLAR AMOUNTS.—The Administrator may not, in con-  
28 nection with any waiver under subparagraph (A), adopt any dollar  
29 amount that is lower than a dollar amount specified in paragraph  
30 (3).

31 (c) CRITERIA FOR ASSISTANCE.—

32 (1) IN GENERAL.—A certified development company shall meet cri-  
33 teria established by the Administrator, including such an extent of par-  
34 ticipation to be required or amount of paid-in capital to be used in each  
35 instance as the Administrator determines to be reasonable.

36 (2) SMALL BUSINESS CONCERN FUNDS.—In the case of any project  
37 of a small business concern financed under the program, the small  
38 business concern (or its owners, stockholders, or affiliates) receiving as-  
39 sistance through a body authorized by this chapter shall provide—

40 (A) at least 15 percent of the total financed cost of the project  
41 if the small business concern has been in operation for a period

1 of 2 years or less or if the project involves the construction of a  
2 limited-purpose or single-purpose building or other structure;

3 (B) at least 20 percent of the total financed cost of the project  
4 if the project involves both of the conditions described in subpara-  
5 graph (A); or

6 (C) an amount specified by the certified development company,  
7 which shall be at least 10 percent of the total financed cost of the  
8 project, if the project involves neither of the conditions described  
9 in subparagraph (A).

10 (3) FUNDING.—

11 (A) IN GENERAL.—Funds necessary to meet the extent of par-  
12 ticipation or amount of paid-in capital determined by the Adminis-  
13 trator under paragraph (1) for a project of a small business con-  
14 cern financed under the program may be derived, in whole or in  
15 part, from—

16 (i) a State or local government;

17 (ii) a bank or other financial institution;

18 (iii) a foundation or other nonprofit institution; or

19 (iv) the small business concern (or its owners, stockholders,  
20 or affiliates).

21 (B) 3D-PARTY FUNDING REQUIREMENT.—Not less than 50 per-  
22 cent of the total financed cost of a project described in subpara-  
23 graph (A) of (B) of paragraph (2) shall come from 1 or more 3d  
24 party sources described in clauses (i), (ii), and (iii) of subpara-  
25 graph (A).

26 (C) SELLER FINANCING.—Financing provided by a seller of  
27 property to a small business concern for a project may be used  
28 to meet the requirements of this paragraph if the seller subordi-  
29 nates the interest of the seller in the property to the debenture  
30 guaranteed by the Administrator.

31 (4) COLLATERAL.—

32 (A) IN GENERAL.—The collateral provided by a small business  
33 concern—

34 (i) shall generally include a subordinate lien position on the  
35 property being financed under the program; and

36 (ii) is only 1 of the factors to be evaluated in the credit  
37 determination.

38 (B) ADDITIONAL COLLATERAL.—Additional collateral shall be  
39 required only if the Administrator determines, on a case-by-case  
40 basis, that additional security is necessary to protect the interest  
41 of the Government.

(C) APPRAISALS.—With respect to commercial real property provided by a small business concern as collateral, an appraisal of the property by a State-licensed or State-certified appraiser—

(i) shall be required by the Administrator before disbursement of the loan if the estimated value of the property is more than \$250,000; and

(ii) may be required by the Administrator or the certified development company before disbursement of the loan, if—

(I) the estimated value of the property is \$250,000 or less; and

(II) an appraisal is necessary for appropriate evaluation of creditworthiness.

(5) LEASING.—

(A) IN GENERAL.—In the case of a project to construct a new facility for a small business concern, up to 33 percent of the total project may be leased, if reasonable projections of growth demonstrate that the small business concern—

(i) will need additional space within 3 years after the date of completion of the facility; and

(ii) will fully utilize the additional space within 10 years after the date of completion of the facility.

(B) LIMITATION ON LEASING.—In addition to any portion of a project of a small business concern permitted to be leased under subparagraph (A), not to exceed 20 percent of the project may be leased by the small business concern to 1 or more other tenants if the small business occupies permanently and uses not less than a total of 60 percent of the space in the project after the execution of any leases authorized under this section.

(6) OWNERSHIP REQUIREMENTS.—

(A) OWNERSHIP BY SPOUSE UNDER COMMUNITY PROPERTY LAW.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under the program shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property law of a State for purposes of determining marital interests.

(B) OWNERSHIP BY RELATIVES.—

(i) IN GENERAL.—The Administrator shall not decline to issue a debenture guarantee for a project of a small business concern on the ground that the ownership interests of the small business concern and the ownership interests of the

1 property to be financed with the proceeds of a loan made with  
2 the proceeds of the guaranteed debenture are not identical be-  
3 cause 1 or more of the classes of relatives described in clause  
4 (ii) have an ownership interest in the small business concern  
5 or the property if the Administrator determines, on a case-  
6 by-case basis, that the ownership interest, the guarantee, and  
7 the proceeds of the loan will substantially benefit the small  
8 business concern.

9 (ii) CLASSES OF RELATIVES.—The classes of relatives re-  
10 ferred to in clause (i) are father, mother, son, daughter, wife,  
11 husband, brother, or sister.

12 (7) PERMISSIBLE DEBT REFINANCING.—

13 (A) IN GENERAL.—Any financing approved under the program  
14 may include a limited amount of debt refinancing.

15 (B) EXPANSIONS.—If a project involves expansion of a small  
16 business concern, any amount of existing indebtedness that does  
17 not exceed 50 percent of the project cost of the expansion may be  
18 refinanced and added to the expansion cost if—

19 (i) the proceeds of the indebtedness were used to acquire  
20 land, including a building situated on the land, to construct  
21 a building on the land or to purchase equipment;

22 (ii) the existing indebtedness is collateralized by fixed as-  
23 sets;

24 (iii) the existing indebtedness was incurred for the benefit  
25 of the small business concern;

26 (iv) the financing under the program will be used only for  
27 refinancing existing indebtedness or costs relating to the  
28 project financed under the program;

29 (v) the financing under the program will provide a substan-  
30 tial benefit to the borrower when prepayment penalties, fi-  
31 nancing fees, and other financing costs are accounted for;

32 (vi) the borrower has been current on all payments due on  
33 the existing debt for not less than 1 year preceding the date  
34 of refinancing; and

35 (vii) the financing under section 331104 of this title will  
36 provide better terms or a better rate of interest than the ex-  
37 isting indebtedness at the time of refinancing.

38 (C) REFINANCING NOT INVOLVING EXPANSION.—

39 (i) DEFINITIONS.—In this subparagraph:

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1 (I) BORROWER.—The term “borrower” means a small  
2 business concern that submits an application to a devel-  
3 opment company for financing under this subparagraph.

4 (II) ELIGIBLE FIXED ASSET.—The term “eligible fixed  
5 asset” means tangible property relating to which the Ad-  
6 ministrator may provide financing under this section.

7 (III) QUALIFIED DEBT.—The term “qualified debt”  
8 means indebtedness—

9 (aa) that—

10 (AA) was incurred not less than 2 years be-  
11 fore the date of the application for assistance  
12 under this subparagraph;

13 (BB) is a commercial loan;

14 (CC) is not subject to a guarantee by a Fed-  
15 eral agency;

16 (DD) the proceeds of which were used to ac-  
17 quire an eligible fixed asset;

18 (EE) was incurred for the benefit of the  
19 small business concern; and

20 (FF) is collateralized by eligible fixed assets;  
21 and

22 (bb) for which the borrower has been current on  
23 all payments for not less than 1 year before the  
24 date of the application.

25 (ii) AUTHORITY.—A project that does not involve the ex-  
26 pansion of a small business concern may include the refinanc-  
27 ing of qualified debt if—

28 (I) the amount of the financing is not more than 90  
29 percent of the value of the collateral for the financing,  
30 except that, if the appraised value of the eligible fixed as-  
31 sets serving as collateral for the financing is less than  
32 the amount equal to 125 percent of the amount of the  
33 financing, the borrower may provide additional cash or  
34 other collateral to eliminate any deficiency;

35 (II) the borrower has been in operation for all of the  
36 2-year period ending on the date of the loan; and

37 (III) in the case of a financing for which the Adminis-  
38 trator determines that there will be an additional cost at-  
39 tributable to the refinancing of the qualified debt, the  
40 borrower agrees to pay a fee in an amount equal to the  
41 anticipated additional cost.



(iii) FINANCING FOR PAYMENT OF BUSINESS EXPENSES.—

(I) FINANCING FOR BUSINESS EXPENSES.—The Administrator may provide financing to a borrower that receives financing that includes a refinancing of qualified debt under clause (ii), in addition to the refinancing under clause (ii), to be used solely for the payment of business expenses.

(II) APPLICATION FOR FINANCING.—An application for financing under subclause (I) shall include—

(aa) a specific description of the expenses for which the additional financing is requested; and

(bb) an itemization of the amount of each expense.

(III) CONDITION ON ADDITIONAL FINANCING.—A borrower may not use any part of the financing under this clause for nonbusiness purposes.

(iv) LOANS BASED ON JOBS.—

(I) JOB CREATION AND RETENTION GOALS.—

(aa) IN GENERAL.—The Administrator may provide financing under this subparagraph for a borrower that meets the job creation goals under subsection (b).

(bb) ALTERNATE JOB RETENTION GOAL.—The Administrator may provide financing under this subparagraph to a borrower that does not meet the goals described in item (aa) in an amount that is not more than the product obtained by multiplying the number of employees of the borrower by \$65,000.

(II) NUMBER OF EMPLOYEES.—For purposes of subclause (I)(bb), the number of employees of a borrower is equal to the sum of—

(aa) the number of full-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; and

(bb) the product obtained by multiplying—

(AA) the number of part-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; by

1 (BB) the quotient obtained by dividing the  
2 average number of hours each part-time em-  
3 ployee of the borrower works each week by 40.

4 (v) NONDELEGATION.—Notwithstanding section 331108(e)  
5 of this title, the Administrator shall not permit a premier cer-  
6 tified lender to approve or disapprove an application for as-  
7 sistance under this subparagraph.

8 (vi) TOTAL AMOUNT OF LOANS.—The Administrator may  
9 provide not more than a total of \$7,500,000,000 of financing  
10 under this subparagraph for each fiscal year.

11 (d) DEBENTURE AMOUNT AND INTEREST.—

12 (1) MAXIMUM DEBENTURE AMOUNT.—The amount of a guaranteed  
13 debenture shall not exceed the aggregate amount of the loans to be  
14 made from the proceeds of the guaranteed debenture (other than any  
15 excess attributable to the administrative costs of the loans).

16 (2) MINIMUM INTEREST RATE.—The interest rate on a guaranteed  
17 debenture shall be not less than the rate of interest determined by the  
18 Secretary of the Treasury for purposes of section 303104(b) of this  
19 title.

20 (e) LOAN APPROVAL, AMOUNT, AND INTEREST RATE.—

21 (1) APPROVAL BY THE ADMINISTRATOR.—The Administrator shall  
22 approve each loan made with the proceeds of a guaranteed debenture.

23 (2) MAXIMUM LOAN AMOUNT.—

24 (A) PERCENTAGE OF PROJECT COST.—The amount of a loan  
25 made with the proceeds of a guaranteed debenture shall not exceed  
26 the amount that is equal to 50 percent of the cost of the project  
27 with respect to which the loan is made.

28 (B) DOLLAR AMOUNT.—

29 (i) IN GENERAL.—Except as provided in clause (ii), the  
30 amount of a loan made with the proceeds of a guaranteed de-  
31 benture shall not exceed \$5,000,000.

32 (ii) EXCEPTIONS.—

33 (I) PUBLIC POLICY OBJECTIVES.—The amount of a  
34 loan for a project directed toward 1 or more of the public  
35 policy objectives described in subsection (b)(1)(B)(iii)  
36 shall not exceed \$5,000,000.

37 (II) SMALL MANUFACTURERS.—The amount of a loan  
38 to a small manufacturer for any 1 project shall not ex-  
39 ceed \$5,500,000.

40 (III) REDUCTION OF ENERGY CONSUMPTION.—The  
41 amount of a loan for a project that reduces the borrow-

1                   er's energy consumption by at least 10 percent shall not  
2                   exceed \$5,500,000.

3                   (IV) GENERATION OF RENEWABLE ENERGY OR RE-  
4                   NEWABLE FUEL.—The amount of a loan for a project  
5                   that generates renewable energy or renewable fuel (such  
6                   as biodiesel or ethanol production) shall not exceed  
7                   \$5,500,000.

8           (f) COMMERCIAL LOAN INTEREST RATE.—

9                   (1) PURPOSE.—The purpose of this subsection is to facilitate the or-  
10                  derly and necessary flow of long-term loans from certified development  
11                  companies to small business concerns.

12                  (2) MAXIMUM INTEREST RATE.—Notwithstanding the provisions of  
13                  the constitution or laws of any State limiting the rate or amount of  
14                  interest that may be charged, taken, received, or reserved, the maxi-  
15                  mum legal rate of interest on any commercial loan that funds any por-  
16                  tion of the cost of the project financed under the program that is not  
17                  funded by a guaranteed debenture shall be a rate established by the  
18                  Administrator under paragraph (3).

19                  (3) ESTABLISHMENT BY THE ADMINISTRATOR.—The Administrator  
20                  shall establish and publish quarterly a maximum legal interest rate for  
21                  any commercial loan that funds any portion of the cost of a project  
22                  financed under the program that is not funded by a guaranteed deben-  
23                  ture.

24           (g) FEES AND CHARGES.—

25                  (1) LOAN FEES.—

26                          (A) IN GENERAL.—With respect to each loan made with the  
27                          proceeds of a guaranteed debenture, the Administrator shall assess  
28                          and collect a fee, which shall be payable by the borrowing small  
29                          business concern, in an amount established annually by the Ad-  
30                          ministrator.

31                          (B) AMOUNT.—

32                                  (i) IN GENERAL.—Except as provided in clause (ii), the  
33                                  amount of a loan fee shall not exceed the lesser of—

34    (I) 0.9375 percent per year of the outstanding balance  
35    of the loan; or

36    (II) the minimum amount necessary to reduce to zero  
37                                  the cost (as defined in section 502 of the Federal Credit  
38                                  Reform Act of 1990 (2 U.S.C. 661a)) to the Adminis-  
39                                  trator of purchasing and guaranteeing debentures under  
40                                  the program.

41                                  (ii) EXCEPTION.—

1 (I) IN GENERAL.—In the case of a loan made during  
2 the 2-year period beginning on October 1, 2002, the  
3 amount of a loan fee shall be 50 percent of the amount  
4 established under clause (i), for the life of the loan.

5 (II) LIMITATION.—Subclause (I) shall be effective only  
6 to the extent that funds are made available under appro-  
7 priations Acts, which funds shall be used by the Admin-  
8 istrator to offset the cost (as defined in section 502 of  
9 the Federal Credit Reform Act of 1990 (2 U.S.C. 661a))  
10 of that subclause.

11 (C) USE OF PROCEEDS.—The Administrator shall use the pro-  
12 ceeds of loan fees collected to offset the cost (as defined in section  
13 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a))  
14 to the Administrator of making guarantees under the program.

15 (2) ADMINISTRATIVE EXPENSE CHARGES.—The Administrator may  
16 impose a charge for administrative expenses with respect to a guaran-  
17 teed debenture.

18 (3) PARTICIPATION FEES.—

19 (A) IN GENERAL.—The Administrator shall collect a 1-time fee  
20 in an amount equal to 50 basis points on the total participation  
21 in a project by an entity described in clause (i), (ii), or (iii) of sub-  
22 section (c)(3)(A) if the participation will occupy a senior credit po-  
23 sition to that of the certified development company.

24 (B) USE OF PROCEEDS.—All proceeds of the participation fee  
25 shall be used to offset the cost (as defined in section 502 of the  
26 Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Ad-  
27 ministrator of making guarantees under the program.

28 (4) CERTIFIED DEVELOPMENT COMPANY FEES.—

29 (A) IN GENERAL.—The Administrator shall collect annually  
30 from a certified development company a fee of 0.125 percent of  
31 the outstanding principal balance of any guaranteed debenture ap-  
32 proved by the Administrator on or after October 1, 1996.

33 (B) DERIVATION.—The fee under subparagraph (A) shall be de-  
34 rived from the servicing fees collected by the certified development  
35 company pursuant to regulation and not from any additional fee  
36 imposed on a small business concern.

37 (C) USE OF PROCEEDS.—All proceeds of the certified develop-  
38 ment company fee shall be used to offset the cost (as defined in  
39 section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C.  
40 661a)) to the Administrator of making guarantees under the pro-  
41 gram.

1 (5) APPLICABILITY.—The fees authorized by this subsection apply to  
2 financings approved by the Administrator on or after October 1, 1996.

3 (h) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits re-  
4 ceived and retained by the Administrator under the program shall be in-  
5 cluded in the calculations made by the Director of the Office of Manage-  
6 ment and Budget to offset the cost (as defined in section 502 of the Federal  
7 Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of pur-  
8 chasing and guaranteeing debentures under the program.

9 (i) REQUIRED ACTIONS ON DEFAULT.—

10 (1) INITIAL ACTIONS.—Not later than the 45th day after the date  
11 on which a payment on a loan funded through a guaranteed debenture  
12 is due and not received, the Administrator shall—

13 (A) take all necessary steps to bring the loan current; or

14 (B) implement a formal written deferral agreement.

15 (2) PURCHASE OR ACCELERATION OF DEBENTURE.—Not later than  
16 the 65th day after the date on which a payment on a loan described  
17 in paragraph (1) is due and not received, and absent a formal written  
18 deferral agreement, the Administrator shall take all necessary steps to  
19 purchase or accelerate the guaranteed debenture.

20 (3) PREPAYMENT PENALTIES.—With respect to the portion of a  
21 project derived from funds described in subsection (c)(3), the Adminis-  
22 trator—

23 (A) shall negotiate the elimination of any prepayment penalties  
24 or late fees on a defaulted loan made before September 30, 1996;

25 (B) shall not pay any prepayment penalty or late fee on the de-  
26 fault-based purchase of a loan issued after September 30, 1996;  
27 and

28 (C) for any project financed after September 30, 1996, shall not  
29 pay any default interest rate higher than the interest rate on the  
30 note prior to the date of default.

31 **§ 331104. Private debenture sales**

32 (a) IN GENERAL.—Notwithstanding any other law (including a regula-  
33 tion), all guaranteed debentures shall be sold to investors, publicly or by pri-  
34 vate placement.

35 (b) FEDERAL FINANCING BANK.—Nothing in any provision of law au-  
36 thorizes the Federal Financing Bank to acquire—

37 (1) any obligation the payment of principal or interest on which at  
38 any time has been guaranteed in whole or in part under the program  
39 that is being sold under subsection (a);

40 (2) any obligation that is an interest in an obligation described in  
41 paragraph (1); or

1 (3) any obligation that is secured by, or substantially all of the value  
2 of which is attributable to, an obligation described in paragraph (1) or  
3 (2).

4 **§ 331105. Pooling of debentures**

5 (a) ISSUANCE.—

6 (1) IN GENERAL.—The Administrator may issue trust certificates  
7 representing ownership of all or a fractional part of a guaranteed de-  
8 benture.

9 (2) TRUST OR POOL.—A trust certificate issued under paragraph (1)  
10 shall be based on and backed by a trust or pool approved by the Ad-  
11 ministrator and composed solely of guaranteed debentures.

12 (b) GUARANTEE.—

13 (1) IN GENERAL.—The Administrator may, on such terms and con-  
14 ditions as the Administrator considers appropriate, guarantee the time-  
15 ly payment of the principal of and interest on trust certificates issued  
16 by the Administrator (or an agent of the Administrator) for purposes  
17 of this section.

18 (2) LIMITATION.—A guarantee shall be limited to the extent of prin-  
19 cipal and interest on the guaranteed debentures that compose the trust  
20 or pool.

21 (3) PREPAYMENT ON REDEMPTION.—

22 (A) REDUCTION OF GUARANTEE.—If a guaranteed debenture in  
23 a trust or pool is prepaid, voluntarily or in the event of default,  
24 the guarantee of timely payment of principal and interest on the  
25 trust certificates shall be reduced in proportion to the amount of  
26 principal and interest that the prepaid guaranteed debenture rep-  
27 resents in the trust or pool.

28 (B) LIMITATION ON GUARANTEE OF INTEREST.—Interest on a  
29 prepaid or defaulted guaranteed debenture shall accrue and be  
30 guaranteed by the Administrator only through the date of pay-  
31 ment on the guarantee.

32 (C) CALL OF TRUST CERTIFICATE.—During the term of a trust  
33 certificate, the trust certificate may be called for redemption due  
34 to prepayment or default of all guaranteed debentures constituting  
35 the trust or pool.

36 (c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith  
37 and credit of the United States is pledged to the payment of all amounts  
38 that may be required to be paid under any guarantee of a trust certificate  
39 issued by the Administrator (or an agent of the Administrator) under this  
40 section.

41 (d) FEES.—

1 (1) ADMINISTRATOR.—The Administrator shall not collect any fee  
2 for a guarantee under this section.

3 (2) AGENT OF THE ADMINISTRATOR.—This subsection does not pre-  
4 clude an agent of the Administrator from collecting a fee approved by  
5 the Administrator for performing the functions described in subsection  
6 (f)(2).

7 (e) SUBROGATION RIGHTS; OWNERSHIP RIGHTS IN GUARANTEED DE-  
8 BENTURES.—

9 (1) SUBROGATION.—If the Administrator pays a claim under a guar-  
10 antee issued under this section, the Administrator shall be subrogated  
11 fully to the rights satisfied by the payment.

12 (2) OWNERSHIP RIGHTS IN GUARANTEED DEBENTURES.—No Fed-  
13 eral, State, or local law shall preclude or limit the exercise by the Ad-  
14 ministrator of the Administrator's ownership rights in the guaranteed  
15 debentures constituting the trust or pool against which the trust certifi-  
16 cates are issued.

17 (f) CENTRAL REGISTRATION; REGULATION OF BROKERS AND DEAL-  
18 ERS.—

19 (1) CENTRAL REGISTRATION.—The Administrator shall provide for  
20 a central registration of all trust certificates sold pursuant to this sec-  
21 tion.

22 (2) AGENT.—

23 (A) IN GENERAL.—The Administrator shall contract with an  
24 agent to carry out on behalf of the Administrator—

- 25 (i) the central registration functions under this section; and  
26 (ii) the issuance of trust certificates to facilitate poolings.

27 (B) BOND OR INSURANCE.—The agent under subparagraph (A)  
28 shall provide a fidelity bond or insurance in such amounts as the  
29 Administrator determines to be necessary to fully protect the in-  
30 terests of the Government.

31 (3) DISCLOSURE.—The Administrator shall require a seller to dis-  
32 close to a purchaser of a trust certificate issued under this section, be-  
33 fore the sale, information on the terms, conditions, and yield of the  
34 trust certificate.

35 (4) REGULATION OF BROKERS AND DEALERS.—The Administrator  
36 may regulate brokers and dealers in trust certificates sold under this  
37 section.

38 (5) FORM OF REGISTRATION.—This subsection does not preclude the  
39 use of a book-entry or other electronic form of registration for trust  
40 certificates.

1    **§ 331106. Prohibition of acceptance of funding with certain**  
2                   **conditions, priorities, restrictions, or requirements**

3       Notwithstanding any other provision of law, a certified development com-  
4       pany shall not accept funding from any source (including a Federal agency)  
5       if the funding—

6           (1) includes any condition, priority, or restriction on the type of  
7           small business concern to which the certified development company  
8           may provide financial assistance under the program; or

9           (2) includes any condition or imposes any requirement, directly or  
10          indirectly, on any recipient of assistance under the program.

11    **§ 331107. Accredited lenders program**

12       (a) ESTABLISHMENT OF PROGRAM.—The Administrator may establish as  
13       part of the program an accredited development company program for quali-  
14       fied development companies that meet the requirements of subsection (b).

15       (b) REQUIREMENTS.—The Administrator may designate a qualified devel-  
16       opment company as an accredited lender if the qualified development com-  
17       pany—

18           (1) has been an active participant in the program for not less than  
19           the preceding 12 months;

20           (2) has well-trained, qualified personnel who are knowledgeable in  
21           SBA's lending policies and procedures for the program;

22           (3) has the ability to process, close, and service financing for plant  
23           and equipment under the program;

24           (4) has a loss rate on the qualified development company's deben-  
25           tures that is reasonable and acceptable to the Administrator;

26           (5) has a history of submitting to the Administrator complete and  
27           accurate debenture guarantee application packages; and

28           (6) has demonstrated the ability to serve small business credit needs  
29           for financing plant and equipment through the program.

30       (c) EXPEDITED PROCESSING OF LOAN APPLICATIONS.—The Adminis-  
31       trator shall develop an expedited procedure for processing a loan application  
32       or servicing action submitted by an accredited lender.

33       (d) SUSPENSION OR REVOCATION OF DESIGNATION.—

34           (1) IN GENERAL.—The Administrator may suspend or revoke the  
35           designation of a qualified development company as an accredited lender  
36           if the Administrator determines that—

37               (A) the qualified development company has not continued to  
38               meet the criteria for eligibility under subsection (b); or

39               (B) the qualified development company has failed to adhere to  
40               the Administrator's regulations or is violating any other applicable  
41               provision of law.



1           (2) EFFECT.—A suspension or revocation under paragraph (1) shall  
2           not affect any outstanding debenture guarantee.

3   **§ 331108. Premier certified lenders program**

4           (a) ESTABLISHMENT OF PROGRAM.—The Administrator may establish as  
5           part of the program a premier certified lenders program for certified devel-  
6           opment companies that meet the requirements of subsection (b).

7           (b) REQUIREMENTS.—

8               (1) APPLICATION.—To be eligible to participate in the premier cer-  
9               tified lenders program, a certified development company shall submit  
10              to the Administrator an application at such time, in such manner, and  
11              containing such information as the Administrator may require.

12           (2) DESIGNATION.—The Administrator may designate a certified de-  
13           velopment company as a premier certified lender if—

14               (A) the certified development company is an active certified de-  
15               velopment company in good standing;

16               (B) the certified development company has been an active par-  
17               ticipant in the accredited lenders program during the entire 12-  
18               month period preceding the date on which the certified develop-  
19               ment company submits an application under paragraph (1);

20               (C) the certified development company has a history of—

21                   (i) submitting to the Administrator adequately analyzed de-  
22                   benture guarantee application packages; and

23                   (ii) properly closing loans under the program and servicing  
24                   its loan portfolio;

25               (D) the certified development company agrees to assume and to  
26               reimburse the Administrator—

27                   (i) for 10 percent of any loss sustained by the Adminis-  
28                   trator as a result of default by the certified development com-  
29                   pany in the payment of principal or interest on a guaranteed  
30                   debenture issued by the certified development company; or

31                   (ii) for 15 percent of the loss, if the loss is attributable to  
32                   a guaranteed debenture issued by the certified development  
33                   company during any period for which an election is in effect  
34                   under subsection (c)(8) for the certified development com-  
35                   pany; and

36               (E) the Administrator determines, with respect to the certified  
37               development company, that the loss reserve established under sub-  
38               section (c) is sufficient for the certified development company to  
39               meet its obligations to protect the Federal Government from risk  
40               of loss.

(3) WAIVER OF REQUIREMENT.—The Administrator may waive the requirement of paragraph (2)(B) with respect to a certified development company if the certified development company is qualified to participate in the accredited lenders program.

(4) APPLICABILITY OF CRITERIA AFTER DESIGNATION.—The Administrator may revoke the designation of a certified development company as a premier certified lender under this section at any time, if the Administrator determines that the certified development company does not meet any requirement described in subparagraphs (A) to (E) of paragraph (2).

(c) LOSS RESERVE.—

(1) IN GENERAL.—A premier certified lender shall establish a loss reserve for financing approved under this section.

(2) AMOUNT.—The amount of a loss reserve under paragraph (1) shall be 10 percent of the amount of the premier certified lender's exposure, as determined under subsection (b)(2)(D).

(3) ASSETS.—A loss reserve under paragraph (1) shall be comprised of—

(A) segregated funds on deposit in 1 or more accounts with 1 or more federally insured depository institutions selected by the premier certified lender, subject to a collateral assignment in favor of, and in a format acceptable to, the Administrator;

(B) 1 or more irrevocable letters of credit, with a collateral assignment in favor of, and a commercially reasonable format acceptable to, the Administrator; or

(C) any combination of the assets described in subparagraphs (A) and (B).

(4) CONTRIBUTIONS.—A premier certified lender shall make contributions to a loss reserve under paragraph (1) in the following amounts and at the following intervals:

(A) 50 percent when a debenture is closed.

(B) 25 percent additional not later than 1 year after a debenture is closed.

(C) 25 percent additional not later than 2 years after a debenture is closed.

(5) REIMBURSEMENT OF THE ADMINISTRATOR FOR LOSS.—If a loss is sustained by the Administrator, any portion of the loss reserve, and other funds provided by the premier certified lender as necessary, may be used to reimburse the Administrator for the premier certified lender's share of the loss as provided in subsection (b)(2)(D) of this section.

1           (6) REPLACEMENT OF USED FUNDS.—If a premier certified lender  
2       uses funds in its loss reserve, the premier certified lender shall replace  
3       an equivalent amount of funds in the loss reserve not later than 30  
4       days after the date of the use.

5           (7) WITHDRAWALS.—

6           (A) IN GENERAL.—The Administrator shall allow a premier cer-  
7       tified lender to withdraw from its loss reserve amounts attrib-  
8       utable to any debenture that is repaid.

9           (B) TEMPORARY REDUCTION BASED ON OUTSTANDING BAL-  
10       ANCE.—

11           (i) IN GENERAL.—Notwithstanding subparagraph (A), dur-  
12       ing the 2-year period beginning on August 26, 2004, the Ad-  
13       ministrator shall allow a premier certified lender to withdraw  
14       from its loss reserve such amounts as are in excess of 1 per-  
15       cent of the aggregate outstanding balances of debentures to  
16       which the loss reserve relates.

17           (ii) APPLICABILITY.—Clause (i) does not apply with respect  
18       to a debenture before 100 percent of the contribution de-  
19       scribed in paragraph (4) with respect to the debenture is  
20       made.

21           (8) ALTERNATIVE LOSS RESERVE.—

22           (A) DEFINITIONS.—In this paragraph:

23           (i) CALENDAR QUARTER.—The term “calendar quarter”  
24       means—

25               (I) the period that begins on January 1 and ends on  
26               March 31 of a year;

27               (II) the period that begins on April 1 and ends on  
28               June 30 of a year;

29               (III) the period that begins on July 1 and ends on  
30               September 30 of a year; and

31               (IV) the period that begins on October 1 and ends on  
32               December 31 of a year.

33           (ii) ELIGIBLE CALENDAR QUARTER.—The term “eligible  
34       calendar quarter” means—

35               (I) the 1st calendar quarter that begins after August  
36               26, 2004; and

37               (II) each of the 7 succeeding calendar quarters.

38           (iii) PCLP LOAN.—The term “PCLP loan” means a loan  
39       guaranteed under this section.

40           (iv) QUALIFIED HIGH LOSS RESERVE PCL.—The term  
41       “qualified high loss reserve PCL” means, with respect to any

1           calendar year, a premier certified lender that the Adminis-  
2           trator designates as a qualified high loss reserve PCL for that  
3           year under subparagraph (B).

4           (v) QUALIFIED INDEPENDENT AUDITOR.—The term “quali-  
5           fied independent auditor”, with respect to any year, means an  
6           auditor that—

7                 (I) is compensated by a qualified high loss reserve  
8                 PCL;

9                 (II) is independent of the qualified high loss reserve  
10                PCL; and

11               (III) was approved by the Administrator during the  
12                preceding year.

13           (vi) SPECIFIED RISK MANAGEMENT BENCHMARK.—The  
14           term “specified risk management benchmark” means the fol-  
15           lowing rates, as determined by the Administrator:

16                 (I) Currency rate.

17                 (II) Delinquency rate.

18                 (III) Default rate.

19                 (IV) Liquidation rate.

20                 (V) Loss rate.

21           (B) DESIGNATION OF QUALIFIED HIGH LOSS RESERVE PCLs.—  
22           The Administrator may designate a premier certified lender as a  
23           qualified high loss reserve PCL if the Administrator determines  
24           that—

25                 (i) the amount of the loss reserve of the premier certified  
26                 lender is not less than \$100,000;

27                 (ii) the premier certified lender has established and is using  
28                 an appropriate and effective process for analyzing the risk of  
29                 loss associated with its portfolio of PCLP loans and for grad-  
30                 ing each PCLP loan made by the premier certified lender on  
31                 the basis of the risk of loss associated with the loan; and

32                 (iii)(I) the premier certified lender meets or exceeds 4 or  
33                 more of the specified risk management benchmarks as of the  
34                 most recent assessment by the Administrator; or

35                 (II) the Administrator issues a waiver with respect to the  
36                 requirement of subclause (I).

37           (C) ELECTION.—With respect to any eligible calendar quarter,  
38           a qualified high loss reserve PCL may elect to have the require-  
39           ments of this paragraph apply in lieu of the requirements of para-  
40           graphs (2) and (4) for that eligible calendar quarter.

41           (D) CONTRIBUTIONS.—

1 (i) ORDINARY RULES INAPPLICABLE.—Except as provided  
2 under clause (ii) and paragraph (6), a qualified high loss re-  
3 serve PCL that makes the election described in subparagraph  
4 (C) with respect to an eligible calendar quarter shall not be  
5 required to make contributions to its loss reserve during that  
6 eligible calendar quarter.

7 (ii) CONTRIBUTION BASED ON LOSS.—A qualified high loss  
8 reserve PCL that makes the election described in subpara-  
9 graph (C) with respect to an eligible calendar quarter shall,  
10 before the last day of that eligible calendar quarter, make  
11 such contributions to its loss reserve as are necessary to en-  
12 sure that the amount of the loss reserve of the qualified high  
13 loss reserve PCL is—

14 (I) not less than \$100,000; and

15 (II) sufficient, as determined by a qualified independ-  
16 ent auditor, for the qualified high loss reserve PCL to  
17 meet its obligations to protect the Federal Government  
18 from risk of loss.

19 (iii) CERTIFICATION.—Before the end of any eligible cal-  
20 endar quarter for which an election is in effect under sub-  
21 paragraph (C), the head of the qualified high loss reserve  
22 PCL shall submit to the Administrator a certification that  
23 the loss reserve of the qualified high loss reserve PCL is suffi-  
24 cient to meet the qualified high loss reserve PCL's obligation  
25 to protect the Federal Government from risk of loss. The cer-  
26 tification shall be in such form and submitted in such manner  
27 as the Administrator may require and shall be signed by the  
28 head of the qualified high loss reserve PCL and the auditor  
29 making the determination under clause (ii)(II).

30 (E) WITHDRAWALS.—

31 (i) ORDINARY RULE INAPPLICABLE.—Paragraph (7) shall  
32 not apply with respect to any qualified high loss reserve PCL  
33 for any calendar quarter for which an election is in effect  
34 under subparagraph (C).

35 (ii) EXCESS FUNDS.—At the end of each calendar quarter  
36 for which an election is in effect under subparagraph (C), the  
37 Administrator shall allow the qualified high loss reserve PCL  
38 to withdraw from its loss reserve the excess of the amount of  
39 the loss reserve over the greater of—

40 (I) \$100,000; or

1 (II) the amount that is determined under subpara-  
2 graph (D)(ii)(II) to be sufficient to meet the PCL's obli-  
3 gation to protect the Federal Government from risk of  
4 loss.

5 (F) RECONTRIBUTION.—

6 (i) IN GENERAL.—If the requirements of this paragraph  
7 apply to a qualified high loss reserve PCL for any eligible cal-  
8 endar quarter and cease to apply to that qualified high loss  
9 reserve PCL for any subsequent eligible calendar quarter, the  
10 qualified high loss reserve PCL shall make a contribution to  
11 its loss reserve in such amount as the Administrator may de-  
12 termine, subject to clause (ii).

13 (ii) AMOUNT.—The amount determined under clause (i)  
14 shall not exceed the amount that would result in the total  
15 amount in the loss reserve being equal to the amount that  
16 would have been in the loss reserve had this paragraph never  
17 applied to the qualified high loss reserve PCL.

18 (iii) FORM.—The Administrator may require that a con-  
19 tribution under clause (i) be made as a single payment or as  
20 a series of payments.

21 (G) RISK MANAGEMENT.—

22 (i) IN GENERAL.—If a qualified high loss reserve PCL fails  
23 to meet the requirement of subparagraph (B)(iii) during any  
24 period for which an election is in effect under subparagraph  
25 (C) and the failure continues for 180 days—

26 (I) the requirements of paragraphs (2), (4), and (7)  
27 shall apply to the qualified high loss reserve PCL as of  
28 the end of that 180-day period; and

29 (II) the qualified high loss reserve PCL shall make the  
30 contribution to its loss reserve described in subparagraph  
31 (F).

32 (ii) WAIVER.—The Administrator may waive the require-  
33 ments of clause (i).

34 (H) REGULATIONS.—

35 (i) IN GENERAL.—The Administrator shall prescribe regu-  
36 lations to carry out this paragraph.

37 (ii) CONTENTS.—The regulations shall include provisions  
38 relating to—

39 (I) the approval of auditors under subparagraph  
40 (A)(v); and

1 (II) the designation of qualified high loss reserve  
2 PCLs under subparagraph (B), including the determina-  
3 tion of whether a process for analyzing risk of loss is ap-  
4 propriate and effective for purposes of subparagraph  
5 (B)(ii).

6 (d) SALE OF CERTAIN DEFAULTED LOANS.—

7 (1) NOTICE.—

8 (A) IN GENERAL.—If, on default in repayment, the Adminis-  
9 trator acquires a loan guaranteed under this section and identifies  
10 the loan for inclusion in a bulk asset sale of defaulted or repur-  
11 chased loans or other financings, the Administrator shall give  
12 prior notice of the inclusion of the loan in the bulk asset sale to  
13 any certified development company that has a contingent liability  
14 under this section.

15 (B) TIMING.—The notice shall be given to the certified develop-  
16 ment company as soon as possible after the financing is identified,  
17 but not less than 90 days before the date on which the Adminis-  
18 trator first makes any records on the financing available for exam-  
19 ination by prospective purchasers prior to its offering in a package  
20 of loans for bulk sale.

21 (2) LIMITATION.—The Administrator shall not offer a loan described  
22 in paragraph (1) as part of a bulk sale unless the Administrator—

23 (A) provides prospective purchasers with the opportunity to ex-  
24 amine the Administrator's records with respect to the loan; and

25 (B) provides the notice required by paragraph (1).

26 (e) LOAN APPROVAL AUTHORITY.—

27 (1) IN GENERAL.—Notwithstanding section 331103(e)(1) of this  
28 title, and subject to such terms and conditions as the Administrator  
29 may establish, the Administrator may—

30 (A) permit a premier certified lender to approve, authorize,  
31 close, service, foreclose, litigate (except that the Administrator  
32 may monitor the conduct of any such litigation to which a premier  
33 certified lender is a party), and liquidate loans that are funded  
34 with the proceeds of a debenture issued by the premier certified  
35 lender; and

36 (B) authorize the guarantee of such a debenture.

37 (2) SCOPE OF REVIEW.—The approval of a loan by a premier cer-  
38 tified lender shall be subject to final approval as to eligibility of any  
39 guarantee by the Administrator under section 331103 of this title, but  
40 such final approval shall not include review of decisions by the lender

1 involving creditworthiness, loan closing, or compliance with legal re-  
2 quirements imposed by law (including a regulation).

3 (f) REVIEW.—

4 (1) IN GENERAL.—After the issuance and sale of debentures under  
5 this section, the Administrator, at intervals of not greater than 12  
6 months, shall review the financings made by each premier certified  
7 lender.

8 (2) MATTERS TO BE REVIEWED.—A review shall include a premier  
9 certified lender's credit decisions and general compliance with the eligi-  
10 bility requirements for each financing approved under the premier cer-  
11 tified lenders program.

12 (3) CONSIDERATION OF FINDINGS.—The Administrator shall con-  
13 sider the findings of the review in carrying out subsection (g), but the  
14 review shall not affect any outstanding debenture guarantee.

15 (g) SUSPENSION OR REVOCATION.—

16 (1) IN GENERAL.—The designation of a certified development com-  
17 pany as a premier certified lender may be suspended or revoked if the  
18 Administrator determines that the certified development company—

19 (A) has not continued to meet the criteria for eligibility under  
20 subsection (b);

21 (B) has not established or maintained the loss reserve required  
22 under subsection (c);

23 (C) is failing to adhere to the Administrator's regulations; or

24 (D) is violating any other applicable provision of law.

25 (2) EFFECT OF SUSPENSION OR REVOCATION.—A suspension or rev-  
26 ocation under this subsection shall not affect any outstanding deben-  
27 ture guarantee.

28 (h) PROGRAM GOALS.—A certified development company that is des-  
29 ignated as a premier certified lender shall establish a goal of processing a  
30 minimum of not less than 50 percent of the loan applications that the cer-  
31 tified development company receives for assistance under the premier cer-  
32 tified lenders program.

33 **§ 331109. Foreclosure and liquidation of loans**

34 (a) DELEGATION OF AUTHORITY.—The Administrator shall delegate to a  
35 qualified development company that meets the eligibility requirements of  
36 subsection (b)(1) the authority to foreclose and liquidate, or to otherwise  
37 treat in accordance with this section, defaulted loans in its portfolio that  
38 are funded with the proceeds of guaranteed debentures.

39 (b) ELIGIBILITY FOR DELEGATION.—

40 (1) REQUIREMENTS.—A qualified development company shall be eli-  
41 gible for a delegation of authority under subsection (a) if—



- 1 (A) the qualified development company—  
2 (i) participated in the loan liquidation pilot program under  
3 section 204 of the Small Business Programs Improvement  
4 Act of 1996 (15 U.S.C. 695 note; 110 Stat. 3009–736), as  
5 in effect on the day before promulgation of final regulations  
6 by the Administrator implementing this section;  
7 (ii) is participating in the premier certified lenders pro-  
8 gram; or  
9 (iii) during the 3 fiscal years immediately prior to seeking  
10 such a delegation, has made an average of not less than 10  
11 loans per year that are funded with the proceeds of guaran-  
12 teed debentures; and

- 13 (B) the qualified development company—  
14 (i) has 1 or more employees—  
15 (I) who have not less than 2 years of substantive deci-  
16 sionmaking experience in administering the liquidation  
17 and workout of problem loans secured in a manner sub-  
18 stantially similar to loans funded with the proceeds of  
19 guaranteed debentures; and  
20 (II) who have completed a training program on loan  
21 liquidation developed by the Administrator in conjunction  
22 with qualified development companies that meet the re-  
23 quirements of this paragraph; or  
24 (ii) submits to the Administrator documentation dem-  
25 onstrating that the qualified development company has con-  
26 tracted with a qualified 3d party to perform any liquidation  
27 activities and secures the approval of the contract by the Ad-  
28 ministrator with respect to the qualifications of the contractor  
29 and the terms and conditions of liquidation activities.

30 (2) CONFIRMATION.—

- 31 (A) EXAMINATION.—On request, the Administrator shall exam-  
32 ine the qualifications of a qualified development company de-  
33 scribed in subsection (a) to determine whether the qualified devel-  
34 opment company is eligible for the delegation of authority under  
35 subsection (a).

- 36 (B) DETERMINATION OF INELIGIBILITY.—If the Administrator  
37 determines that a qualified development company is not eligible,  
38 the Administrator shall provide the qualified development company  
39 with the reasons for ineligibility.

40 (c) SCOPE OF DELEGATED AUTHORITY.—

1 (1) IN GENERAL.—A qualified development company to which the  
2 Administrator delegates authority under subsection (a) may, with re-  
3 spect to any loan described in subsection (a)—

4 (A) perform all liquidation and foreclosure functions, including  
5 the purchase in accordance with this subsection of any other in-  
6 debtedness secured by the property securing the loan, in a reason-  
7 able and sound manner according to commercially accepted prac-  
8 tices, pursuant to a liquidation plan approved in advance by the  
9 Administrator under paragraph (2)(A);

10 (B) litigate any matter relating to the performance of the func-  
11 tions described in subparagraph (A), except that the Adminis-  
12 trator may—

13 (i) defend or bring any claim if—

14 (I) the outcome of the litigation may adversely affect  
15 the Administrator's management of the program; or

16 (II) the Administrator is entitled to legal remedies not  
17 available to a qualified development company, and those  
18 remedies will benefit the Administrator or the qualified  
19 development company; or

20 (ii) oversee the conduct of any such litigation; and

21 (C) take other appropriate actions to mitigate loan losses in lieu  
22 of total liquidation or foreclosures, including the restructuring of  
23 a loan in accordance with prudent loan servicing practices and  
24 pursuant to a workout plan approved in advance by the Adminis-  
25 trator under paragraph (2)(C).

26 (2) APPROVAL BY THE ADMINISTRATOR.—

27 (A) LIQUIDATION PLAN.—

28 (i) SUBMISSION.—Before carrying out functions described  
29 in paragraph (1)(A), a qualified development company shall  
30 submit to the Administrator a proposed liquidation plan.

31 (ii) ACTION BY THE ADMINISTRATOR ON PROPOSED LIQ-  
32 UIDATION PLAN.—

33 (I) TIMING.—Not later than 15 business days after a  
34 liquidation plan is received by the Administrator under  
35 clause (i), the Administrator shall approve or reject the  
36 liquidation plan.

37 (II) NOTICE OF NO DECISION.—With respect to any  
38 liquidation plan that cannot be approved or denied with-  
39 in the 15-day period required by subclause (I), the Ad-  
40 ministrator shall within that period provide in accord-

1                   ance with subparagraph (E) notice to the qualified devel-  
2                   opment company that submitted the liquidation plan.

3                   (iii) ROUTINE ACTIONS.—In carrying out functions de-  
4                   scribed in paragraph (1)(A), a qualified development company  
5                   may undertake routine actions not addressed in a liquidation  
6                   plan without obtaining additional approval from the Adminis-  
7                   trator.

8                   (B) PURCHASE OF INDEBTEDNESS.—

9                   (i) IN GENERAL.—In carrying out functions described in  
10                  paragraph (1)(A), a qualified development company shall sub-  
11                  mit to the Administrator a request for written approval before  
12                  committing the Administrator to the purchase of any other  
13                  indebtedness secured by the property securing a defaulted  
14                  loan.

15                  (ii) ACTION BY THE ADMINISTRATOR ON REQUEST.—

16                  (I) TIMING.—Not later than 15 business days after re-  
17                  ceiving a request under clause (i), the Administrator  
18                  shall approve or deny the request.

19                  (II) NOTICE OF NO DECISION.—With respect to any  
20                  request that cannot be approved or denied within the 15-  
21                  day period required by subclause (I), the Administrator  
22                  shall within that period provide in accordance with sub-  
23                  paragraph (E) notice to the qualified development com-  
24                  pany that submitted the request.

25                  (C) WORKOUT PLAN.—

26                  (i) IN GENERAL.—In carrying out functions described in  
27                  paragraph (1)(C), a qualified development company shall sub-  
28                  mit to the Administrator a proposed workout plan.

29                  (ii) ACTION BY THE ADMINISTRATOR ON PROPOSED WORK-  
30                  OUT PLAN.—

31                  (I) TIMING.—Not later than 15 business days after a  
32                  workout plan is received by the Administrator under  
33                  clause (i), the Administrator shall approve or reject the  
34                  workout plan.

35                  (II) NOTICE OF NO DECISION.—With respect to any  
36                  workout plan that cannot be approved or denied within  
37                  the 15-day period required by subclause (I), the Admin-  
38                  istrator shall, within that period, provide in accordance  
39                  with subparagraph (E) notice to the qualified develop-  
40                  ment company that submitted the workout plan.

(D) COMPROMISE OF INDEBTEDNESS.—In carrying out functions described in paragraph (1)(A), a qualified development company may—

(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

(ii) pursuant to such an offer, release any obligor or other party contingently liable, if the qualified development company secures the written approval of the Administrator.

(E) CONTENTS OF NOTICE OF NO DECISION.—A notice provided by the Administrator under subparagraph (A)(ii)(II), (B)(ii)(II), or (C)(ii)(II)—

(i) shall be in writing;

(ii) shall state the specific reason for the Administrator's inability to act on a liquidation plan, request, or workout plan;

(iii) shall include an estimate of the additional time required by the Administrator to act on the liquidation plan, request, or workout plan; and

(iv) if the Administrator cannot act because insufficient information or documentation was provided by the qualified development company that submitted the liquidation plan, request, or workout plan, shall specify the nature of such additional information or documentation.

(3) CONFLICT OF INTEREST.—In carrying out functions described in paragraph (1), a qualified development company shall take no action that would result in an actual or apparent conflict of interest between the qualified development company (or any employee of the qualified development company) and any 3d party lender, associate of a 3d party lender, or any other person participating in a liquidation, foreclosure, or loss mitigation action.

(d) SUSPENSION OR REVOCATION OF AUTHORITY.—The Administrator may revoke or suspend a delegation of authority under this section to a qualified development company if the Administrator determines that the qualified development company—

(1) does not meet the requirements of subsection (b)(1);

(2) has violated any applicable regulation of the Administrator or any other applicable law; or

(3) fails to comply with any reporting requirement that may be established by the Administrator relating to the carrying out of functions described in this section.

## Subtitle IV—Miscellaneous

### Chapter 401—PRIME Program

Sec.

- 401101. Definitions.
- 401102. Establishment of program.
- 401103. Uses of assistance.
- 401104. Allocation of assistance; subgrants.
- 401105. Matching requirement.
- 401106. Applications for assistance.
- 401107. Recordkeeping.
- 401108. Implementation.
- 401109. Authorization of appropriations.

#### § 401101. Definitions

In this chapter:

(1) CAPACITY BUILDING SERVICE.—The term “capacity building service” means a service provided to an organization that is, or that is in the process of becoming, a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs.

(2) COLLABORATIVE.—The term “collaborative” means 2 or more nonprofit entities that agree to act jointly as a qualified organization under the program.

(3) DISADVANTAGED ENTREPRENEUR.—The term “disadvantaged entrepreneur” means a microentrepreneur that is—

(A) a low-income person;

(B) a very low-income person; or

(C) an entrepreneur that lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as determined by the Administrator.

(4) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702).

(5) INTERMEDIARY.—The term “intermediary” means a private, nonprofit entity that seeks to serve qualified organizations.

(6) LOW-INCOME PERSON.—The term “low-income person” has the meaning given the term in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702).

(7) MICROENTERPRISE.—The term “microenterprise” means a sole proprietorship, partnership, or corporation that—

(A) has fewer than 5 employees; and

(B) generally lacks access to conventional loans, equity, or other banking services.

(8) MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM.—The term “microenterprise development organization or pro-

gram” means a nonprofit entity (including a community development corporation or other nonprofit development organization or a social service organization), or a program administered by such an entity, that provides services to disadvantaged entrepreneurs.

(9) MICROENTREPRENEUR.—The term “microentrepreneur” means the owner or developer of a microenterprise.

(10) PROGRAM.—The term “program” means the PRIME program.

(11) QUALIFIED ORGANIZATION.—The term “qualified organization” means—

(A) a nonprofit microenterprise development organization or program (or a group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged entrepreneurs;

(B) an intermediary;

(C) a microenterprise development organization or program that is accountable to a local community, working in conjunction with a State or local government or Indian tribe; or

(D) an Indian tribe acting on its own, if the Indian tribe certifies that no private organization or program referred to in this paragraph exists within its jurisdiction.

(12) TRAINING AND TECHNICAL ASSISTANCE.—The term “training and technical assistance” means service and support provided to a disadvantaged entrepreneur, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services.

(13) VERY LOW-INCOME PERSON.—The term “very low-income person” means a person having an income, adjusted for family size, of not more than 150 percent of the poverty line (as defined in section 673 of the Community Services Block Grant Act (42 U.S.C. 9902), including any revision required by that section).

#### **§ 401102. Establishment of program**

The Administrator shall establish a microenterprise technical assistance and capacity building grant program, to be known as the program for investment in microenterprise or the PRIME program, to provide assistance in the form of grants to qualified organizations in accordance with this chapter.

#### **§ 401103. Uses of assistance**

A qualified organization shall use a grant made under the program—

(1) to provide training and technical assistance to disadvantaged entrepreneurs;

(2) to provide training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist the organizations and programs in developing microenterprise training and services;

(3) to aid in researching and developing the best practices in the field of microenterprise and technical assistance programs for disadvantaged entrepreneurs; and

(4) for such other activities as the Administrator determines are consistent with the purposes of the program.

**§ 401104. Allocation of assistance; subgrants**

(a) ALLOCATION OF ASSISTANCE.—

(1) IN GENERAL.—The Administrator shall allocate assistance under the program to ensure that—

(A) activities described in section 401103(1) of this title are funded using not less than 75 percent of amounts made available for such assistance; and

(B) activities described in section 401103(2) of this title are funded using not less than 15 percent of amounts made available for such assistance.

(2) LIMIT ON INDIVIDUAL ASSISTANCE.—No single person may receive more than 10 percent of the total funds appropriated for the program in a single fiscal year.

(b) TARGETED ASSISTANCE.—The Administrator shall ensure that not less than 50 percent of the grants made under the program are used to benefit very low-income persons, including those residing on Indian reservations.

(c) SUBGRANTS.—

(1) IN GENERAL.—A qualified organization receiving assistance under the program may provide grants using that assistance to qualified small and emerging microenterprise organizations and programs, subject to such regulations as the Administrator determines to be appropriate.

(2) LIMIT ON ADMINISTRATIVE EXPENSES.—Not more than 7.5 percent of the amount of assistance received by a qualified organization under the program may be used for administrative expenses in connection with the making of subgrants under paragraph (1).

(d) DIVERSITY.—In making grants under the program, the Administrator shall ensure that grant recipients include both large and small microenterprise organizations, serving urban, rural, and Indian tribal communities with diverse populations.

(e) PROHIBITION OF PREFERENTIAL CONSIDERATION OF CERTAIN SBA PROGRAM PARTICIPANTS.—In making grants under the program, the Administrator shall ensure that any application made by a qualified organization that is a participant in the microloan program does not receive preferential consideration over applications from other qualified organizations that are not participants in the microloan program.

**§ 401105. Matching requirement**

(a) IN GENERAL.—Financial assistance under the program shall be matched with funds from sources other than the Federal Government in the amount of not less than 50 cents for each dollar provided by the Administrator.

(b) SOURCES OF MATCHING FUNDS.—Fees, grants, gifts, funds from loan sources, and in-kind resources of a grant recipient from public or private sources may be used to comply with the matching requirement under subsection (a).

(c) EXCEPTION.—

(1) IN GENERAL.—In the case of an applicant for assistance under the program with severe constraints on available sources of matching funds, the Administrator may reduce or eliminate the matching requirement under subsection (a).

(2) LIMITATION.—Not more than 10 percent of the total funds made available to carry out the program for any fiscal year may be excepted under paragraph (1) from the matching requirement under subsection (a).

**§ 401106. Applications for assistance**

An application for assistance under the program shall be submitted in such form and in accordance with such procedures as the Administrator shall establish.

**§ 401107. Recordkeeping**

The requirements of section 115 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4714) shall apply to a qualified organization receiving assistance from the Administrator under the program as if the qualified organization were a community development financial institution receiving assistance from the Fund under subtitle A of that Act (12 U.S.C. 4701 et seq.).

**§ 401108. Implementation**

The Administrator shall by regulation establish such requirements as are necessary to carry out this chapter.

**§ 401109. Authorization of appropriations**

There are authorized to be appropriated to the Administrator to carry out this chapter—



- 1 (1) \$15,000,000 for fiscal year 2000;
- 2 (2) \$15,000,000 for fiscal year 2001;
- 3 (3) \$15,000,000 for fiscal year 2002; and
- 4 (4) \$15,000,000 for fiscal year 2003.

## 5 **Chapter 403—Women’s Business Enterprise** 6 **Development**

Sec.

- 403101. Definitions.
- 403102. Establishment of the Interagency Committee.
- 403103. Duties of the Interagency Committee.
- 403104. Membership of the Interagency Committee.
- 403105. Reports from the Interagency Committee.
- 403106. Establishment of the National Women’s Business Council.
- 403107. Duties of the Council.
- 403108. Membership and staff of the Council.
- 403109. Studies and other research.
- 403110. Authorization of appropriations.

### 7 **§ 403101. Definitions**

8 In this chapter:

- 9 (1) CONTROL.—The term “control” means to exercise the power to  
10 make policy decisions concerning a business.
- 11 (2) COUNCIL.—The term “Council” means the National Women’s  
12 Business Council established under section 403106 of this title.
- 13 (3) INTERAGENCY COMMITTEE.—The term “Interagency Committee”  
14 means the Interagency Committee on Women’s Business Enterprise es-  
15 tablished under section 403102 of this title.
- 16 (4) OPERATE.—The term “operate” means to be actively involved in  
17 the day-to-day management of a business.
- 18 (5) WOMEN’S BUSINESS ENTERPRISE.—The term “women’s business  
19 enterprise” means—  
20 (A) a business or businesses owned by a woman or a group of  
21 women; or  
22 (B) the establishment, maintenance, or development of a busi-  
23 ness or businesses by a woman or a group of women.
- 24 (6) WOMEN-OWNED BUSINESS.—The term “women-owned business”  
25 means a small business—  
26 (A) that a woman or a group of women controls and operates;  
27 and  
28 (B) of which not less than 51 percent is owned by a woman or  
29 a group of women.

### 30 **§ 403102. Establishment of the Interagency Committee**

31 There is established an interagency committee to be known as the Inter-  
32 agency Committee on Women’s Business Enterprise.

### 33 **§ 403103. Duties of the Interagency Committee**

34 (a) IN GENERAL.—The Interagency Committee shall—

(1) monitor, coordinate, and promote the plans, programs, and operations of the Federal agencies that may contribute to the establishment and growth of women's business enterprises;

(2) develop and promote new public sector initiatives, policies, programs, and plans designed to foster women's business enterprises;

(3) review, monitor, and coordinate plans and programs, developed in the public sector, that affect the ability of women-owned businesses to obtain capital and credit; and

(4) promote and assist, as appropriate, in the development of surveys of women-owned businesses.

(b) MEETINGS.—

(1) IN GENERAL.—The Interagency Committee shall meet not less than biannually at such times as the Interagency Committee determines to be necessary to perform the duties under subsection (a).

(2) QUORUM.—A majority of the members of the Interagency Committee shall constitute a quorum for the approval of recommendations or reports issued under this section.

(c) INTERACTION WITH COUNCIL.—

(1) CONSULTATION.—In performing its duties under subsection (a), the Interagency Committee shall consult with the Council.

(2) JOINT MEETINGS.—The Interagency Committee—

(A) shall meet jointly with the Council not less frequently than biannually; and

(B) may meet jointly with the Council more frequently at the discretion of the chairperson of the Interagency Committee and the chairperson of the Council.

(3) CHAIRPERSON.—The chairperson of the Interagency Committee shall serve as chairperson of any joint meeting of the Interagency Committee and the Council.

**§ 403104. Membership of the Interagency Committee**

(a) IN GENERAL.—

(1) PARTICIPANTS.—The Interagency Committee shall be composed of 1 representative from each of the following:

(A) The Department of Commerce.

(B) The Department of Defense.

(C) The Department of Health and Human Services.

(D) The Department of Labor.

(E) SBA.

(F) The Department of Transportation.

(G) The Department of the Treasury.

(H) The General Services Administration.

1 (I) The Board of Governors of the Federal Reserve.

2 (J) The Executive staff of the President engaged in policy-  
3 making activities.

4 (2) APPOINTMENTS.—

5 (A) IN GENERAL.—Except as provided in subparagraph (B), the  
6 head of each entity listed in paragraph (1) shall designate a rep-  
7 resentative who—

8 (i) shall be a policymaking official within the entity; and

9 (ii) shall report directly to the head of the entity on the  
10 status of the activities of the Interagency Committee.

11 (B) SBA.—With respect to SBA, the representative shall be the  
12 Assistant Administrator of the Office of Women’s Business Own-  
13 ership, who shall—

14 (i) serve as the vice chairperson of the Interagency Com-  
15 mittee;

16 (ii) report directly to the Administrator on the status of the  
17 activities on the Interagency Committee; and

18 (iii) serve as the Interagency Committee Liaison to the  
19 Council.

20 (3) OTHER PARTICIPATION.—Representatives of the Federal Govern-  
21 ment not listed in paragraph (1) may participate in the meetings and  
22 functions of the Interagency Committee on a temporary basis as needed  
23 to carry out specific Interagency Committee goals.

24 (b) APPOINTMENT OF CHAIRPERSON.—The President, in consultation  
25 with the Administrator, shall appoint 1 of the members of the Interagency  
26 Committee to serve as chairperson.

27 (c) NONCOMPENSATION.—A member of the Interagency Committee shall  
28 serve without additional pay for such membership.

29 (d) DETAIL OF FEDERAL EMPLOYEES.—On request by the chairperson  
30 of the Interagency Committee, the head of any Federal agency may detail  
31 any of the personnel of the Federal agency to assist the Interagency Com-  
32 mittee in carrying out its duties under this chapter without regard to sec-  
33 tion 3341 of title 5.

34 **§ 403105. Reports from the Interagency Committee**

35 The Interagency Committee, through the Administrator, shall annually  
36 submit to the President, the Committee on Small Business and Entrepre-  
37 neurship of the Senate, and the Committee on Small Business of the House  
38 of Representatives a report that contains—

39 (1) a detailed description of the activities of the Interagency Com-  
40 mittee, including a verbatim report on the status of progress of the

1 Interagency Committee in meeting its responsibilities and duties under  
2 section 403103(a) of this title;

3 (2) the findings and conclusions of the Interagency Committee; and

4 (3) the Interagency Committee's recommendations for such legisla-  
5 tion and administrative actions as the Interagency Committee considers  
6 appropriate to promote the development of small business concerns  
7 owned and controlled by women.

8 **§ 403106. Establishment of the National Women's Business**  
9 **Council**

10 There is established a council to be known as the National Women's  
11 Business Council, which shall serve as an independent source of advice and  
12 policy recommendations to—

13 (1) the Interagency Committee;

14 (2) the Administrator (through the Assistant Administrator of the  
15 Office of Women's Business Ownership);

16 (3) Congress; and

17 (4) the President.

18 **§ 403107. Duties of the Council**

19 (a) IN GENERAL.—The Council shall advise and consult with the Inter-  
20 agency Committee on matters relating to the activities, functions, and poli-  
21 cies of the Interagency Committee, as provided in this chapter.

22 (b) MEETINGS.—

23 (1) IN GENERAL.—The Council—

24 (A) shall meet jointly with the Interagency Committee as pro-  
25 vided in section 403103(c) of this title; and

26 (B) shall meet separately at such times as the Council considers  
27 necessary.

28 (2) QUORUM.—A majority of the members of the Council shall con-  
29 stitute a quorum for the approval of recommendations or reports issued  
30 under this section.

31 (c) RECOMMENDATIONS AND REPORTS.—The Council shall—

32 (1) make annual recommendations for consideration by the Inter-  
33 agency Committee; and

34 (2) provide reports and make such other recommendations as the  
35 Council considers appropriate to—

36 (A) the Interagency Committee;

37 (B) the President;

38 (C) the Administrator (through the Assistant Administrator of  
39 the Office of Women's Business Ownership); and

1 (D) the Committee on Small Business and Entrepreneurship of  
2 the Senate and the Committee on Small Business of the House  
3 of Representatives.

4 (d) OTHER DUTIES.—The Council shall—

5 (1) review, coordinate, and monitor plans and programs developed in  
6 the public and private sectors that affect the ability of women-owned  
7 business enterprises to obtain capital and credit;

8 (2) promote and assist in the development of a women's business  
9 census and other surveys of women-owned businesses;

10 (3) monitor and promote the plans, programs, and operations of  
11 Federal agencies that may contribute to the establishment and growth  
12 of women's business enterprise;

13 (4) develop and promote new initiatives, policies, programs, and  
14 plans designed to foster women's business enterprises;

15 (5) advise and consult with the Interagency Committee in the design  
16 of a comprehensive plan for a joint public-private sector effort to facili-  
17 tate growth and development of women's business enterprises; and

18 (6) not later than 90 days after the last day of each fiscal year, sub-  
19 mit to the President, the Committee on Small Business and Entrepre-  
20 neurship of the Senate, and the Committee on Small Business of the  
21 House of Representatives, a report that contains—

22 (A) a detailed description of the activities of the Council, includ-  
23 ing a status report on the Council's progress toward meeting its  
24 duties under this subsection and subsection (a);

25 (B) the findings, conclusions, and recommendations of the  
26 Council; and

27 (C) the Council's recommendations for such legislation and ad-  
28 ministrative actions as the Council considers appropriate to pro-  
29 mote the development of small business concerns owned and con-  
30 trolled by women.

31 (e) FORM OF INFORMATION.—The information described in subpara-  
32 graphs (A) to (C) of subsection (d)(6) shall be reported in a report under  
33 subsection (d) verbatim, with any separate additional, concurring, or dis-  
34 senting views of the Administrator.

35 **§ 403108. Membership and staff of the Council**

36 (a) CHAIRPERSON.—

37 (1) IN GENERAL.—The President shall appoint an individual to  
38 serve as chairperson of the Council, in consultation with the Adminis-  
39 trator.

1           (2) QUALIFICATIONS.—The chairperson of the Council shall be a  
2           prominent business woman who is qualified to head the Council by vir-  
3           tue of her education, training, and experience.

4           (b) OTHER MEMBERS.—The Administrator shall, after receiving the rec-  
5           ommendations of the Chairman and the Ranking Member of the Committee  
6           on Small Business and Entrepreneurship of the Senate and the Committee  
7           on Small Business of the House of Representatives, appoint, in consultation  
8           with the chairperson of the Council, 14 members of the Council, of whom—

9           (1) 4 shall be—

10           (A) owners of small business concerns; and

11           (B) members of the same political party as the President;

12           (2) 4 shall—

13           (A) be owners of small business concerns; and

14           (B) not be members of the same political party as the Presi-  
15           dent; and

16           (3) 6 shall be representatives of women’s business organizations, in-  
17           cluding representatives of women’s business center sites.

18           (c) DIVERSITY.—In appointing members of the Council, the Adminis-  
19           trator shall, to the extent possible, ensure that the members appointed re-  
20           flect geographic (including both urban and rural areas), racial, economic,  
21           and public-private sectoral diversity.

22           (d) TERMS.—A member of the Council shall be appointed for a term of  
23           3 years.

24           (e) OTHER FEDERAL SERVICE.—If, after appointment to the Council, a  
25           member of the Council becomes an officer or employee of the Federal Gov-  
26           ernment, the member may continue as a member of the Council for not  
27           longer than the 30-day period beginning on the date on which the member  
28           becomes such an officer or employee.

29           (f) VACANCIES.—

30           (1) IN GENERAL.—A vacancy on the Council shall be filled not later  
31           than 30 days after the date on which the vacancy occurs, in the man-  
32           ner in which the original appointment was made, and shall be subject  
33           to any conditions that applied to the original appointment.

34           (2) UNEXPIRED TERM.—An individual chosen to fill a vacancy shall  
35           be appointed for the unexpired term of the member replaced.

36           (g) REIMBURSEMENTS.—A member of the Council shall serve without pay  
37           for such membership, except that a member shall be entitled to reimburse-  
38           ment for travel, subsistence, and other necessary expenses incurred by the  
39           member in carrying out the functions of the Council, in the same manner  
40           as a person serving on an advisory committee under section 103115 of this  
41           title.

(h) EXECUTIVE DIRECTOR AND ADDITIONAL EMPLOYEES.—

(1) EXECUTIVE DIRECTOR.—The Administrator, in consultation with the chairperson of the Council, shall appoint an executive director of the Council.

(2) ADDITIONAL EMPLOYEES.—On recommendation by the executive director, the chairperson of the Council may appoint and fix the pay of 4 additional employees of the Council, at a rate of pay not to exceed the maximum rate of pay payable for a position at GS-15 of the General Schedule.

(3) APPROPRIATIONS.—An appointment under paragraph (1) or (2) shall be subject to the appropriation of funds.

(i) RATES OF PAY.—The executive director and staff of the Council may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and except as provided in subsection (e), may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that the executive director may not receive pay in excess of the annual rate of basic pay payable for a position at ES-3 of the Senior Executive Pay Schedule under section 5382 of title 5.

#### **§ 403109. Studies and other research**

(a) IN GENERAL.—The Council may conduct such studies and other research relating to the award of Federal prime contracts and subcontracts to women-owned businesses, to access to credit and investment capital by women entrepreneurs, or to other issues relating to women-owned businesses, as the Council determines to be appropriate.

(b) CONTRACT AUTHORITY.—In conducting any study or other research under this section, the Council may contract with 1 or more public or private entities.

#### **§ 403110. Authorization of appropriations**

(a) IN GENERAL.—There is authorized to be appropriated to carry out this chapter \$1,000,000 for each of fiscal years 2001 through 2003, of which \$550,000 shall be available in each such fiscal year to carry out section 403109 of this title.

(b) BUDGET REVIEW.—No amount made available under this section for any fiscal year may be obligated or expended by the Council before the date on which the Council reviews and approves the operating budget of the Council to carry out the responsibilities of the Council for that fiscal year.

## **Chapters 405 Through 489—Reserved**

## **Chapter 491—Miscellaneous**

Sec.

491101. Small business economic policy.

491102. Small Business Manufacturing Task Force.

- 491103. Test program for negotiation of comprehensive small business subcontracting plans.
- 491104. Coordination of Federal assistance for small business concerns adversely affected by NAFTA.
- 491105. Disaster aid to major sources of employment.
- 491106. Background check policy; fingerprinting.
- 491107. Expedited resolution of contract dispute matters.
- 491108. Small Business Procurement Advisory Council.
- 491109. Small business energy efficiency.
- 491110. Information regarding, and marketing of, programs for veterans and reservists.
- 491111. Outreach regarding health insurance options available to children.
- 491112. Secondary market lending authority.

1     **§ 491101. Small business economic policy**

2         (a) DECLARATION OF SMALL BUSINESS POLICY.—

3             (1) PRESERVATION AND PROMOTION OF COMPETITIVE FREE ENTER-  
4             PRISE SYSTEM.—For the purpose of preserving and promoting a com-  
5             petitive free enterprise economic system, Congress declares that it is  
6             the continuing policy and responsibility of the Federal Government to  
7             use all practical means and to take such actions as are necessary, con-  
8             sistent with its needs and obligations and other essential considerations  
9             of national policy, to implement and coordinate all Federal agency poli-  
10            cies, programs, and activities to—

11                 (A) foster the economic interests of small businesses;

12                 (B) ensure the existence of a competitive economic climate con-  
13                 ducive to the development, growth, and expansion of small busi-  
14                 nesses;

15                 (C) establish incentives to ensure that adequate capital and  
16                 other resources at competitive prices are available to small busi-  
17                 nesses;

18                 (D) reduce the concentration of economic resources and expand  
19                 competition; and

20                 (E) provide an opportunity for entrepreneurship, inventiveness,  
21                 and the creation and growth of small businesses.

22             (2) AVAILABILITY OF ADEQUATE CAPITAL TO SMALL BUSINESSES.—

23             Congress declares that the Federal Government is committed to a pol-  
24             icy of utilizing all reasonable means, consistent with the overall eco-  
25             nomic policy goals of the Nation and the preservation of the competi-  
26             tive free enterprise system of the Nation, to establish private sector in-  
27             centives that will help ensure that adequate capital at competitive  
28             prices is available to small businesses.

29             (b) PROMOTION OF INVESTMENT.—To fulfill the policy stated in sub-  
30             section (a), each Federal agency shall use all reasonable means to coordi-  
31             nate, create, and sustain policies and programs that promote investment in  
32             small businesses, including the investments that expand employment oppor-  
33             tunities and foster the effective and efficient use of human and natural re-  
34             sources in the national economy.



1 (c) REPORT ON SMALL BUSINESS AND COMPETITION.—

2 (1) IN GENERAL.—Not later than January 20 of each year, the  
3 President shall submit to the Committee on Small Business and Entre-  
4 preneurship of the Senate and the Committee on Small Business of the  
5 House of Representatives a report on small business and competition.

6 (2) CONTENTS.—A report under paragraph (1) shall—

7 (A) examine the current role of small business in the economy  
8 on an industry-by-industry basis;

9 (B) present current and historical data on production, employ-  
10 ment, investment, population, job creation and retention, annual  
11 business failures, annual business startups, and other economic  
12 variables for small business in the economy as a whole and for  
13 small business in each sector of the economy, with, to the extent  
14 practicable, specific statistics divided as to urban, suburban, and  
15 rural areas;

16 (C) identify economic trends that may affect the small business  
17 sector and the state of competition;

18 (D)(i) examine the effects on small business and competition of  
19 policies, programs, and activities, including—

20 (I) the Internal Revenue Code of 1986 (26 U.S.C. 1 et  
21 seq.);

22 (II) the Employee Retirement Income Security Act of 1974  
23 (29 U.S.C. 1001 et seq.);

24 (III) the Securities Act of 1933 (15 U.S.C. 77a et seq.);  
25 and

26 (IV) the Securities Exchange Act of 1934 (15 U.S.C. 78a  
27 et seq.);

28 (ii) identify problems generated by such policies, programs, and  
29 activities; and

30 (iii) recommend legislative and administrative solutions to such  
31 problems;

32 (E) recommend a program for carrying out the policy declared  
33 in subsection (a), including such recommendations for legislation  
34 as the President considers necessary or desirable; and

35 (F) include an appendix that discloses, for each Federal agen-  
36 cy—

37 (i) the total dollar value of all Federal contracts (including  
38 subcontracts) exceeding \$10,000 in amount; and

39 (ii) the dollar amount of those contracts awarded to—

40 (I) small businesses;

41 (II) minority-owned businesses;

1 (III) female-owned businesses; and

2 (IV) veteran-owned businesses.

3 (3) DETAILING OF INFORMATION.—The information required to be  
4 contained in the report under paragraph (1) shall separately detail the  
5 portions of the information that are relevant to—

6 (A) small business concerns owned and controlled by socially  
7 and economically disadvantaged individuals, by gender;

8 (B) small business concerns owned and controlled by women;

9 (C) qualified HUBZone small business concerns; and

10 (D) small business concerns owned and controlled by veterans  
11 and small business concerns owned and controlled by service-dis-  
12 abled veterans.

13 (4) SUPPLEMENTARY REPORTS.—The President may from time to  
14 time submit to the Committee on Small Business and Entrepreneurship  
15 of the Senate and the Committee on Small Business of the House of  
16 Representatives reports supplementary to a report under paragraph (1)  
17 that includes such supplementary or revised recommendations as the  
18 President considers necessary or desirable to achieve the policy declared  
19 in subsection (a).

20 **§ 491102. Small Business Manufacturing Task Force**

21 (a) ESTABLISHMENT.—The Administrator shall establish a Small Busi-  
22 ness Manufacturing Task Force (referred to in this section as the “Task  
23 Force”) to address the concerns of small manufacturers.

24 (b) CHAIR.—The Administrator shall assign a member of the Task Force  
25 to serve as chair of the Task Force.

26 (c) DUTIES.—The Task Force shall—

27 (1) evaluate and identify whether programs and services are suffi-  
28 cient to serve the needs of small manufacturers;

29 (2) actively promote the SBA programs and services that serve small  
30 manufacturers; and

31 (3) identify and study the unique conditions facing small manufac-  
32 turers and develop and propose policy initiatives to support and assist  
33 small manufacturers.

34 (d) MEETINGS.—

35 (1) FREQUENCY.—The Task Force shall meet not less than 4 times  
36 a year, and more frequently if necessary to perform its duties.

37 (2) QUORUM.—A majority of the members of the Task Force shall  
38 constitute a quorum to approve recommendations or reports.

39 (e) PERSONNEL MATTERS.—

1 (1) COMPENSATION OF MEMBERS.—A member of the Task Force  
2 shall serve without compensation in addition to that received for serv-  
3 ices rendered as an officer or employee of the United States.

4 (2) DETAIL OF SBA EMPLOYEES.—Any SBA employee may be de-  
5 tailed to the Task Force without reimbursement and without interrup-  
6 tion or loss of civil service status or privilege.

7 (f) REPORT.—The Task Force shall annually submit a report containing  
8 the findings and recommendations of the Task Force to—

9 (1) the President;

10 (2) the Committee on Small Business and Entrepreneurship of the  
11 Senate; and

12 (3) the Committee on Small Business of the House of Representa-  
13 tives.

14 **§ 491103. Test program for negotiation of comprehensive**  
15 **small business subcontracting plans**

16 (a) TEST PROGRAM.—

17 (1) IN GENERAL.—The Secretary of Defense shall establish a test  
18 program under which contracting activities in the military departments  
19 and the defense agencies are authorized to undertake 1 or more dem-  
20 onstration projects to determine whether the negotiation and adminis-  
21 tration of comprehensive subcontracting plans will reduce administra-  
22 tive burdens on contractors while enhancing opportunities provided  
23 under Department of Defense contracts for small business concerns  
24 and small business concerns owned and controlled by socially and eco-  
25 nomically disadvantaged individuals.

26 (2) BROAD RANGE OF SUPPLIES AND SERVICES.—In selecting the  
27 contracting activities to undertake demonstration projects, the Sec-  
28 retary of Defense shall take such action as is necessary to ensure that  
29 a broad range of the supplies and services acquired by the Department  
30 of Defense are included in the test program.

31 (3) CONSULTATION; PUBLIC COMMENT.—In developing the test pro-  
32 gram, the Secretary of Defense shall—

33 (A) consult with the Administrator; and

34 (B) provide an opportunity for public comment on the test pro-  
35 gram.

36 (b) COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLAN.—

37 (1) IN GENERAL.—In a demonstration project under the test pro-  
38 gram, the Secretary of a military department or head of a defense  
39 agency shall negotiate, monitor, and enforce compliance with a compre-  
40 hensive subcontracting plan with a Department of Defense contractor  
41 described in paragraph (3).

1 (2) SCOPE.—The comprehensive subcontracting plan of a contrac-  
2 tor—

3 (A) shall apply to the entire business organization of the con-  
4 tractor or to 1 or more of the contractor's divisions or operating  
5 elements, as specified in the subcontracting plan; and

6 (B) shall cover each Department of Defense contract that is en-  
7 tered into by the contractor and each subcontract that is entered  
8 into by the contractor as the subcontractor under a Department  
9 of Defense contract.

10 (3) DEPARTMENT OF DEFENSE CONTRACTOR.—A Department of  
11 Defense contractor referred to in paragraph (1) is, with respect to a  
12 comprehensive subcontracting plan negotiated in any fiscal year, a  
13 business concern that, during the immediately preceding fiscal year,  
14 furnished the Department of Defense with goods or services (including  
15 professional services, research and development services, and construc-  
16 tion services) under at least 3 Department of Defense contracts having  
17 an aggregate value of at least \$5,000,000.

18 (c) WAIVER OF CERTAIN SUBCONTRACTING PLAN REQUIREMENTS.—A  
19 Department of Defense contractor is not required to negotiate or submit a  
20 subcontracting plan under section 243102(a) or 243103(c) of this title with  
21 respect to a Department of Defense contract if—

22 (1) the contractor has negotiated a comprehensive subcontracting  
23 plan under the test program that includes the matters specified in sec-  
24 tion 243103(d) of this title;

25 (2) such matters have been determined to be acceptable by the Sec-  
26 retary of the military department or head of a Defense Agency nego-  
27 tiating the comprehensive subcontracting plan; and

28 (3) the comprehensive subcontracting plan applies to the contract.

29 (d) FAILURE TO MAKE A GOOD FAITH EFFORT TO COMPLY WITH A  
30 COMPANY-WIDE SUBCONTRACTING PLAN.—A contractor that has nego-  
31 tiated a comprehensive subcontracting plan under the test program shall be  
32 subject to section 243105 of this title regarding the assessment of liquidated  
33 damages for failure to make a good faith effort to comply with its company-  
34 wide plan and the goals specified in the plan.

35 (e) REPORT.—

36 (1) IN GENERAL.—Not later than March 1, 2012, the Secretary of  
37 Defense shall submit to the Committee on Armed Services and Com-  
38 mittee on Small Business and Entrepreneurship of the Senate and the  
39 Committee on Armed Services and Committee on Small Business of the  
40 House of Representatives a report on the results of the test program.

(2) COMMENTS AND RECOMMENDATIONS OF THE ADMINISTRATOR.—

Before submitting the report to Congress, the Secretary shall transmit the proposed report to the Administrator. The report submitted to Congress shall include any comments and recommendations relating to the report that are transmitted to the Secretary by the Administrator before March 1, 2012.

(f) TERMINATION.—The test program shall terminate on December 31, 2014.

**§ 491104. Coordination of Federal assistance for small business concerns adversely affected by NAFTA**

The Administrator shall coordinate Federal assistance to provide counseling to small business concerns adversely affected by the North American Free Trade Agreement.

**§ 491105. Disaster aid to major sources of employment**

(a) IN GENERAL.—The Administrator may provide any nonagricultural enterprise that has constituted a major source of employment in an area suffering a major disaster and that is no longer in substantial operation as a result of the disaster a loan in such amount as is necessary to enable the enterprise to resume operations in order to assist in restoring the economic viability of the disaster area.

(b) LOAN AMOUNT.—A loan under this section shall be made without regard to any limitation on the amount of a loan that may otherwise be imposed by any other provision of law (including a regulation).

(c) ADDITIONAL ASSISTANCE.—Assistance under this section shall be in addition to any other Federal disaster assistance, except that such other assistance may be adjusted or modified to the extent that the Under Secretary of Emergency Preparedness and Response considers appropriate.

(d) INTEREST.—A loan made under this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of 10 to 12 years, reduced by not to exceed 2 percent per year. In no event shall a loan made under this section bear interest at a rate in excess of 6 percent per year.

(e) DEFERRAL OF PAYMENT OF PRINCIPAL AND INTEREST.—The President, if the President considers it necessary, may defer payments of principal and interest on a loan under this section for a period not to exceed 3 years after the date of the loan. Any such deferred payments shall bear interest at the rate determined under subsection (d).

**§ 491106. Background check policy; fingerprinting**

The Administrator shall not require fingerprints to be obtained for background check purposes from any participant in any SBA program who is

1 serving on a voluntary basis and without compensation unless the Adminis-  
2 trator has reasonable grounds to believe that the participant's record or  
3 background is such as to make the participant ineligible to participate in  
4 the program.

5 **§ 491107. Expedited resolution of contract dispute matters**

6 (a) REQUIRED FAR PROVISION.—The Federal Acquisition Regulation  
7 shall include provisions that require a contracting officer—

8 (1) to make every reasonable effort to respond in writing within 30  
9 days to any written request made to a contracting officer with respect  
10 to a matter relating to the administration of a contract that is received  
11 from a small business concern; and

12 (2) if the contracting officer is unable to reply within the 30-day pe-  
13 riod, to transmit to the contractor within that period a written notifica-  
14 tion of a specific date by which the contracting officer expects to re-  
15 spond.

16 (b) APPLICABILITY.—The provision required under subsection (a) shall  
17 not apply to a request for a contracting officer's decision under chapter 71  
18 of title 41.

19 (c) EFFECT OF SECTION.—This section does not create any right under  
20 chapter 71 of title 41.

21 **§ 491108. Small Business Procurement Advisory Council**

22 (a) ESTABLISHMENT.—There is established an interagency council to be  
23 known as the Small Business Procurement Advisory Council (referred to in  
24 this section as the "Council").

25 (b) DUTIES.—The duties of the Council are—

26 (1) to develop positions on proposed procurement regulations affect-  
27 ing the small business community; and

28 (2) to submit comments reflecting such positions to appropriate reg-  
29 ulatory authorities.

30 (c) MEMBERSHIP.—The Council shall be composed of the following mem-  
31 bers:

32 (1) The Administrator (or the designee of the Administrator).

33 (2) The Director of the Minority Business Development Agency.

34 (3) The head of each office of small and disadvantaged business uti-  
35 lization established under section 251109 of this title for each procur-  
36 ing agency.

37 (d) CHAIRMAN.—The Council shall be chaired by the Administrator.

38 (e) MEETINGS.—The Council shall meet at the call of the chairman as  
39 necessary to consider proposed procurement regulations affecting the small  
40 business community.

(f) CONSIDERATION OF COUNCIL COMMENTS.—The Federal Acquisition Regulatory Council and other appropriate regulatory authorities shall consider comments submitted in a timely manner under subsection (b)(2).

**§ 491109. Small business energy efficiency**

(a) DEFINITIONS.—In this section:

(1) DISABILITY.—The term “disability” has the meaning given the term in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

(2) EFFICIENCY PROGRAM.—the term “efficiency program” means the small business energy efficiency program established under subsection (c).

(3) ELECTRIC UTILITY.—The term “electric utility” has the meaning given the term in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

(4) GOVERNMENTWIDE PROGRAM.—The term “Governmentwide program” means the program established under subsection (b).

(5) HIGH-PERFORMANCE GREEN BUILDING.—The term “high-performance green building” has the meaning given the term in section 401 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17061).

(6) ON-BILL FINANCING.—The term “on-bill financing” means a low interest or no interest financing agreement between a small business concern and an electric utility for the purchase or installation of equipment under which—

(A) the regularly scheduled payment of the small business concern to the electric utility is not reduced by the amount of the reduction in cost attributable to the new equipment; and

(B) that amount is credited to the electric utility until the cost of the purchase or installation is repaid.

(7) TELECOMMUTING.—The term “telecommuting” means the use of telecommunications to perform work functions under circumstances that reduce or eliminate the need to commute.

(8) TELECOMMUTING PILOT PROGRAM.—The term “telecommuting pilot program” means the pilot program established under subsection (d).

(b) GOVERNMENTWIDE PROGRAM.—

(1) IN GENERAL.—The Administrator shall promulgate final rules establishing the Governmentwide program authorized under subsection (d) of section 337 of the Energy Policy and Conservation Act (42 U.S.C. 6307) that ensure compliance with that subsection.

1           (2) ASSISTANCE.—The Administrator shall develop and coordinate a  
2 Governmentwide program, building on the Energy Star for Small Busi-  
3 ness program, to assist small business concerns in—

4           (A) becoming more energy efficient;

5           (B) understanding the cost savings from improved energy effi-  
6 ciency; and

7           (C) identifying financing options for energy efficiency upgrades.

8           (3) CONSULTATION AND COOPERATION.—The Governmentwide pro-  
9 gram shall be developed and coordinated—

10           (A) in consultation with the Secretary of Energy and the Ad-  
11 ministrator of the Environmental Protection Agency; and

12           (B) in cooperation with any entities that the Administrator con-  
13 siderers appropriate, such as industry trade associations, industry  
14 members, and energy efficiency organizations.

15           (4) AVAILABILITY OF INFORMATION.—The Administrator shall make  
16 available the information and materials developed under the Govern-  
17 mentwide program to—

18           (A) small business concerns, including smaller design, engineer-  
19 ing, and construction firms; and

20           (B) other Federal programs for energy efficiency, such as the  
21 Energy Star for Small Business program.

22           (5) STRATEGY AND REPORT.—

23           (A) STRATEGY REQUIRED.—The Administrator shall develop a  
24 strategy to educate, encourage, and assist small business concerns  
25 in adopting energy efficient building fixtures and equipment.

26           (B) REPORT.—Not later than December 31, 2008, the Adminis-  
27 trator shall submit to Congress a report containing a plan to im-  
28 plement the strategy developed under subparagraph (A).

29           (c) EFFICIENCY PROGRAM.—

30           (1) AUTHORITY.—The Administrator shall establish a small business  
31 energy efficiency program to provide energy efficiency assistance to  
32 small business concerns through small business development centers.

33           (2) SMALL BUSINESS DEVELOPMENT CENTERS.—

34           (A) IN GENERAL.—In carrying out the efficiency program, the  
35 Administrator shall enter into agreements with small business de-  
36 velopment centers under which small business development centers  
37 shall—

38           (i) provide access to information and resources on energy  
39 efficiency practices, including on-bill financing options;

40           (ii) conduct training and educational activities;



1 (iii) offer confidential, free, one-on-one, in-depth energy au-  
2 dits to owners and operators of small business concerns re-  
3 garding energy efficiency practices;

4 (iv) give referrals to certified professionals and other pro-  
5 viders of energy efficiency assistance that meet such stand-  
6 ards for educational, technical, and professional competency  
7 as the Administrator shall establish;

8 (v) to the extent not inconsistent with controlling State  
9 public utility regulations, act as a facilitator between small  
10 business concerns, electric utilities, lenders, and the Adminis-  
11 trator to facilitate on-bill financing arrangements;

12 (vi) provide necessary support to small business concerns  
13 to—

14 (I) evaluate energy efficiency opportunities and oppor-  
15 tunities to design or construct high-performance green  
16 buildings;

17 (II) evaluate renewable energy sources, such as the  
18 use of solar and small wind energy to supplement power  
19 consumption;

20 (III) secure financing to achieve energy efficiency or  
21 to design or construct high-performance green buildings;  
22 and

23 (IV) implement energy efficiency projects;

24 (vii) assist owners and operators of small business concerns  
25 with the development and commercialization of clean tech-  
26 nology products, goods, services, and processes that use re-  
27 newable energy sources, dramatically reduce the use of natu-  
28 ral resources, and cut or eliminate greenhouse gas emissions  
29 through—

30 (I) technology assessment;

31 (II) intellectual property;

32 (III) small business innovation research submissions  
33 under division I of subtitle II;

34 (IV) strategic alliances;

35 (V) business model development; and

36 (VI) preparation for investors; and

37 (viii) help small business concerns improve environmental  
38 performance by shifting to less hazardous materials and re-  
39 ducing waste and emissions, including by providing assistance  
40 for small business concerns to adapt the materials they use,

1 the processes they operate, and the products and services they  
2 produce.

3 (B) REPORTS.—A small business development center participat-  
4 ing in the efficiency program shall submit to the Administrator  
5 and the Administrator of the Environmental Protection Agency an  
6 annual report that includes—

7 (i) a summary of the energy efficiency assistance provided  
8 by the small business development center under the efficiency  
9 program;

10 (ii) the number of small business concerns assisted by the  
11 small business development center under the efficiency pro-  
12 gram;

13 (iii) statistics on the total amount of energy saved as a re-  
14 sult of assistance provided by that center under the efficiency  
15 program; and

16 (iv) any additional information that the Administrator, in  
17 consultation with the Association, determines to be necessary.

18 (C) REPORTS TO CONGRESS.—Not later than 60 days after the  
19 date on which all reports under subparagraph (B) relating to a  
20 year are submitted, the Administrator shall submit to the Commit-  
21 tee on Small Business and Entrepreneurship of the Senate and  
22 the Committee on Small Business of the House of Representatives  
23 a report summarizing the information regarding the efficiency pro-  
24 gram submitted by small business development centers participat-  
25 ing in the efficiency program.

26 (3) ELIGIBILITY.—A small business development center shall be eli-  
27 gible to participate in the efficiency program only if the small business  
28 development center is accredited under section 271111(b) of this title.

29 (4) SELECTION OF PARTICIPATING STATE PROGRAMS.—From among  
30 small business development centers submitting applications to partici-  
31 pate in the efficiency program, the Administrator—

32 (A) shall, to the maximum extent practicable, select small busi-  
33 ness development centers in such a manner as to promote a na-  
34 tionwide distribution of small business development centers partici-  
35 pating in the efficiency program; and

36 (B) may not select more than 1 small business development cen-  
37 ter in a State to participate in the efficiency program.

38 (5) MATCHING REQUIREMENT.—Section 271102(g)(1) of this title  
39 shall apply to assistance made available under the efficiency program.

40 (6) GRANT AMOUNTS.—A small business development center selected  
41 to participate in the efficiency program under paragraph (4) shall be

1 eligible to receive a grant in an amount equal to not less than  
2 \$100,000 nor more than \$300,000 in each fiscal year.

3 (7) EVALUATION AND REPORT.—The Comptroller General shall—

4 (A) not later than 30 months after the date of disbursement of  
5 the 1st grant under the efficiency program, initiate an evaluation  
6 of the efficiency program; and

7 (B) not later than 6 months after the date of the initiation of  
8 the evaluation under subparagraph (A), submit to the Adminis-  
9 trator, the Committee on Small Business and Entrepreneurship of  
10 the Senate, and the Committee on Small Business of the House  
11 of Representatives a report containing—

12 (i) the results of the evaluation; and

13 (ii) any recommendations regarding whether the efficiency  
14 program, with or without modification, should be extended to  
15 include the participation of all small business development  
16 centers.

17 (8) GUARANTEE.—To the extent not inconsistent with State law, the  
18 Administrator may guarantee the timely payment of a loan made to a  
19 small business concern through an on-bill financing agreement on such  
20 terms and conditions as the Administrator shall establish through a  
21 formal rulemaking, after providing notice and an opportunity for com-  
22 ment.

23 (9) IMPLEMENTATION.—Subject to amounts approved in advance in  
24 appropriations Acts and separate from amounts approved to carry out  
25 section 271102(a) of this title, the Administrator may make grants or  
26 enter into cooperative agreements to carry out this subsection.

27 (10) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to  
28 be appropriated such sums as are necessary to make grants and enter  
29 into cooperative agreements to carry out this subsection.

30 (11) TERMINATION.—The authority under this subsection shall ter-  
31minate 4 years after the date of disbursement of the 1st grant under  
32the efficiency program.

33 (d) TELECOMMUTING PILOT PROGRAM.—

34 (1) IN GENERAL.—The Administrator shall conduct, in not more  
35 than 5 SBA regions, a pilot program to provide information regarding  
36 telecommuting to small business concerns and to encourage small busi-  
37ness concerns to offer telecommuting options to their employees.

38 (2) SPECIAL OUTREACH TO INDIVIDUALS WITH DISABILITIES.—In  
39 carrying out the telecommuting pilot program, the Administrator shall  
40 make a concerted effort to provide information to—

1 (A) small business concerns owned by or employing individuals  
2 with disabilities, particularly veterans who are individuals with dis-  
3 abilities;

4 (B) Federal, State, and local agencies having knowledge and ex-  
5 pertise in assisting individuals with disabilities, including veterans  
6 who are individuals with disabilities; and

7 (C) any group or organization the primary purpose of which is  
8 to aid individuals with disabilities or veterans who are individuals  
9 with disabilities.

10 (3) PERMISSIBLE ACTIVITIES.—In carrying out the telecommuting  
11 pilot program, the Administrator may—

12 (A) produce educational materials and conduct presentations de-  
13 signed to raise awareness in the small business community of the  
14 benefits and the ease of telecommuting;

15 (B)(i) conduct outreach to small business concerns that are con-  
16 sidering offering telecommuting options; and

17 (ii) conduct outreach as provided in paragraph (2); and

18 (C) acquire telecommuting technologies and equipment to be  
19 used for demonstration purposes.

20 (4) SELECTION OF REGIONS.—In determining which regions will par-  
21 ticipate in the telecommuting pilot program, the Administrator shall  
22 give priority consideration to regions in which Federal agencies and  
23 private-sector employers have demonstrated a strong regional commit-  
24 ment to telecommuting.

25 (5) REPORT.—Not later than 2 years after the date on which funds  
26 are first appropriated to carry out this subsection, the Administrator  
27 shall submit to the Committee on Small Business and Entrepreneur-  
28 ship of the Senate and the Committee on Small Business of the House  
29 of Representatives a report containing the results of an evaluation of  
30 the telecommuting pilot program and any recommendations regarding  
31 whether the pilot program, with or without modification, should be ex-  
32 tended to include the participation of all SBA regions.

33 (6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to  
34 be appropriated to SBA \$5,000,000 to carry out this subsection.

35 (7) TERMINATION.—The telecommuting pilot program shall termi-  
36 nate 4 years after the date on which funds are first appropriated to  
37 carry out this subsection.

38 **§ 491110. Information regarding, and marketing of, pro-**  
39 **grams for veterans and reservists**

40 (a) IN GENERAL.—The Administrator and the Secretary of Defense shall  
41 develop a joint website and printed materials providing information regard-

1 ing any program for small business concerns that is available to veterans  
2 or reservists.

3 (b) MARKETING.—The Administrator may—

4 (1) advertise and promote the program under section 221103 of this  
5 title jointly with the Secretary of Defense and veterans' service organi-  
6 zations; and

7 (2) advertise and promote participation by lenders in the program  
8 jointly with trade associations for banks or other lending institutions.

9 **§ 491111. Outreach regarding health insurance options**  
10 **available to children**

11 (a) DEFINITIONS.—In this section:

12 (1) CERTIFIED DEVELOPMENT COMPANY.—The term “certified de-  
13 velopment company” means a development company that is participat-  
14 ing in the certified development company program.

15 (2) MEDICAID PROGRAM.—The term “Medicaid program” means the  
16 program established under title XIX of the Social Security Act (42  
17 U.S.C. 1396 et seq.).

18 (3) STATE.—The term “State” has the meaning given the term for  
19 purposes of title XXI of the Social Security Act (42 U.S.C. 1397aa et  
20 seq.).

21 (4) STATE CHILDREN’S HEALTH INSURANCE PROGRAM.—The term  
22 “State children’s health insurance program” means the State children’s  
23 health insurance program established under title XXI of the Social Se-  
24 curity Act (42 U.S.C. 1397aa et seq.).

25 (5) TASK FORCE.—The term “task force” means the task force es-  
26 tablished under subsection (b)(1).

27 (b) ESTABLISHMENT OF TASK FORCE.—

28 (1) ESTABLISHMENT.—There is established a task force to conduct  
29 a nationwide campaign of education and outreach for small business  
30 concerns regarding the availability of coverage for children through pri-  
31 vate insurance options, the Medicaid program, and the State children’s  
32 health insurance program.

33 (2) MEMBERSHIP.—The task force shall consist of the Adminis-  
34 trator, the Secretary of Health and Human Services, the Secretary of  
35 Labor, and the Secretary of the Treasury.

36 (3) RESPONSIBILITIES.—The campaign conducted under this sub-  
37 section shall include—

38 (A) efforts to educate the owners of small business concerns  
39 about the value of health coverage for children;

40 (B) information regarding options available to the owners and  
41 employees of small business concerns to make insurance more af-

fordable, including Federal and State tax deductions and credits for health care-related expenses and health insurance expenses and Federal tax exclusion for health insurance options available under employer-sponsored cafeteria plans under section 125 of the Internal Revenue Code of 1986 (26 U.S.C. 125);

(C) efforts to educate the owners of small business concerns about assistance available through public programs; and

(D) efforts to educate the owners and employees of small business concerns regarding the availability of the hotline operated as part of the Insure Kids Now program of the Department of Health and Human Services.

(4) IMPLEMENTATION.—In carrying out this subsection, the task force may—

(A) use any business partner of SBA, including—

- (i) a small business development center;
- (ii) a certified development company;
- (iii) a women’s business center; and
- (iv) SCORE;

(B) enter into—

- (i) a memorandum of understanding with a chamber of commerce; and
- (ii) a partnership with any appropriate small business concern or health advocacy group; and

(C) designate outreach programs at regional offices of the Department of Health and Human Services to work with SBA district offices.

(5) WEBSITE.—The Administrator shall ensure that links to information on the eligibility and enrollment requirements for the Medicaid program and State children’s health insurance program of each State are prominently displayed on the SBA website.

(6) REPORT.—

(A) IN GENERAL.—Every 2 years, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the status of the nationwide campaign conducted under paragraph (1).

(B) CONTENTS.—A report under subparagraph (A) shall include a status update on all efforts made to educate owners and employees of small business concerns on options for providing health insurance for children through public and private alternatives.

1    **§ 491112. Secondary market lending authority**

2       (a) DEFINITIONS.—In this section:

3           (1) AUTHORITY.—The term “Authority” mean the Secondary Mar-  
4       ket Lending Authority established under subsection (b)(2).

5           (4) SBA SECONDARY MARKET.—The term “SBA secondary market”  
6       means the market for the purchase and sale of loans originated, under-  
7       written, and closed under subtitles I and II.

8           (5) The term “systemically important SBA secondary market broker-  
9       dealer” means an entity designated as such under subsection (b)(1).

10      (b) RESPONSIBILITIES, AUTHORITIES, ORGANIZATION, AND LIMITA-  
11      TIONS.—

12           (1) DESIGNATION OF SYSTEMICALLY IMPORTANT SBA SECONDARY  
13       MARKET BROKER-DEALERS.—The Administrator shall establish a proc-  
14       ess by which the Administrator, in consultation with the Board of Gov-  
15       ernors of the Federal Reserve and the Secretary of the Treasury, shall  
16       designate as systemically important SBA secondary market broker-  
17       dealers entities that are vital to the continued operation of the SBA  
18       secondary market by reason of their purchase and sale of the govern-  
19       ment guaranteed portion of loans, or pools of loans, originated, under-  
20       written, and closed under subtitles I and II.

21           (2) ESTABLISHMENT OF SBA SECONDARY MARKET LENDING AU-  
22       THORITY.—

23           (A) ORGANIZATION.—

24               (i) IN GENERAL.—The Administrator shall establish within  
25       the SBA an office, to be known as the Secondary Market  
26       Lending Authority, to provide loans to systemically important  
27       SBA secondary market broker-dealers to be used for the pur-  
28       pose of financing the inventory of the government guaranteed  
29       portion of loans, originated, underwritten, and closed under  
30       subtitles I and II, or pools of such loans.

31               (ii) DIRECTOR.—The Administrator shall appoint a Direc-  
32       tor of the Authority, who shall report to the Administrator.

33               (iii) PERSONNEL.—The Administrator may hire such per-  
34       sonnel as are necessary to operate the Authority.

35               (iv) CONTRACTING OF OPERATIONS.—The Administrator  
36       may contract such Authority operations as the Administrator  
37       determines to be necessary to qualified 3d party persons.

38               (v) CONTRACTING WITH FIDUCIARY AND CUSTODIAL  
39       AGENTS.—The Administrator may contract with private sec-  
40       tor fiduciary and custodial agents as necessary to operate the  
41       Authority.

1 (B) LOANS.—

2 (i) PROCESS.—The Administrator shall establish by regula-  
3 tion a process under which systemically important SBA sec-  
4 ondary market broker-dealers may apply to the Administrator  
5 for loans under this section.

6 (ii) CONTENTS.—

7 (I) PROCESS.—The regulation under clause (i) shall  
8 provide a process by which the Administrator shall con-  
9 sider and make decisions regarding whether to extend a  
10 loan applied for under this section.

11 (II) DOCUMENTATION.—The regulation under clause  
12 (i) shall provide for such loan documents, legal cov-  
13 enants, collateral requirements and other required docu-  
14 mentation as necessary to protect the interests of the  
15 Administrator and the United States.

16 (III) OTHER PROVISIONS.—The regulation under  
17 clause (i) shall include provisions to ensure that—

18 (aa) loans made under this section are for the  
19 sole purpose of financing the inventory of the Gov-  
20 ernment guaranteed portion of loans, originated,  
21 underwritten, and closed under subtitles I and II, or  
22 pools of such loans.

23 (bb) loans made under this section are fully col-  
24 lateralized to the satisfaction of the Administrator;

25 (cc) there is no limit to the frequency with which  
26 a borrower may borrow under this section unless the  
27 Administrator determines that doing so would cre-  
28 ate an undue risk of loss to the Administrator or  
29 the United States; and

30 (dd) there is no limit on the size of a loan, sub-  
31 ject to the discretion of the Administrator.

32 (iii) INTEREST.—Interest on loans under this section shall  
33 not exceed the Federal Funds target rate established by the  
34 Federal Reserve Board of Governors plus 25 basis points.

35 (iv) CUSTODIAL ACCOUNTS.—The Administrator shall es-  
36 tablish custodial accounts to safeguard any collateral pledged  
37 to the Administrator in connection with a loan under this sec-  
38 tion.

39 (v) PROCESS FOR DISBURSEMENTS AND RECEIPTS.—The  
40 Administrator shall establish a process to disburse and receive  
41 funds to and from borrowers under this section.



(C) LIMITATIONS ON USE OF LOAN PROCEEDS BY SYSTEM-  
ICALLY IMPORTANT SBA SECONDARY MARKET BROKER-DEAL-  
ERS.—

(I) USE OF FUNDS FOR SPECIFIED PURPOSES.—The  
Administrator shall ensure that borrowers under this  
section are using funds provided under this section only  
for the purpose specified in subparagraph  
(B)(ii)(III)(aa).

(II) USE OF FUNDS FOR OTHER THAN SPECIFIED  
PURPOSES.—If the Administrator finds that funds pro-  
vided under this section were used for any other purpose  
other than a purpose specified in subparagraph  
(B)(ii)(III)(aa), the Administrator shall—

(aa) require immediate repayment of outstanding  
loans;

(bb) prohibit the borrower, its affiliates, or any  
future corporate manifestation of the borrower from  
using the Authority; and

(cc) take any other action that the Administrator,  
in consultation with the Attorney General, considers  
appropriate.

(d) REPORT.—Not later than the 3d business day of each month, the Ad-  
ministrator shall submit to Congress a report that discloses—

(1) the aggregate loan amounts extended during the preceding  
month under this section;

(2) the aggregate loan amounts repaid under this section during the  
preceding month;

(3) the aggregate loan amount outstanding under this section;

(4) the aggregate value of assets held as collateral under this section;

(5) the amount of any defaults or delinquencies on loans made under  
this section;

(6) the identity of any borrower found by the Administrator to have  
misused funds made available under this section; and

(7) any other information that the Administrator considers necessary  
to fully inform Congress of undue risk of financial loss to the United  
States in connection with loans made under this section.

(e) DURATION.—The authority of this section shall remain in effect for  
a period of 2 years after February 17, 2009.

(f) FEES.—The Administrator shall charge fees (up front, annual, or  
both) at a specified percentage of the loan amount that is at such a rate

1 that the cost of the program under the Federal Credit Reform Act of 1990  
2 (2 U.S.C. 661 et seq.) shall be equal to zero.

3 (h) BUDGET TREATMENT.—Nothing in this section shall be construed to  
4 exempt any activity of the Administrator under this section from the Fed-  
5 eral Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

6 (i) EMERGENCY RULEMAKING AUTHORITY.—The Administrator shall  
7 promulgate regulations under this section. The notice requirements of Sec-  
8 tion 553(b) of title 5 shall not apply to promulgation of regulations under  
9 this section.

10 **SEC. 4. TRANSITIONAL AND SAVINGS PROVISIONS.**

11 (a) DEFINITIONS.—In this section:

12 (1) SOURCE PROVISION.—The term “source provision” means a pro-  
13 vision of law that is replaced by a title 53 provision.

14 (2) TITLE 53 PROVISION.—The term “title 53 provision” means a  
15 provision of title 53, United States Code, that is enacted by section 3.

16 (b) CUTOFF DATE.—The title 53 provisions replace certain provisions of  
17 law enacted on or before July 27, 2012. If a law enacted after that date  
18 amends or repeals a source provision, that law is deemed to amend or re-  
19 peal, as the case may be, the corresponding title 53 provision. If a law en-  
20 acted after that date is otherwise inconsistent with a title 53 provision or  
21 a provision of this Act, that law supersedes the title 53 provision or provi-  
22 sion of this Act to the extent of the inconsistency.

23 (c) ORIGINAL DATE OF ENACTMENT UNCHANGED.—A title 53 provision  
24 is deemed to have been enacted on the date of enactment of the correspond-  
25 ing source provision.

26 (d) REFERENCES TO TITLE 53 PROVISIONS.—A reference to a title 53  
27 provision is deemed to refer to the corresponding source provision.

28 (e) REFERENCES TO SOURCE PROVISIONS.—A reference to a source pro-  
29 vision, including a reference in a regulation, order, or other law, is deemed  
30 to refer to the corresponding title 53 provision.

31 (f) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A  
32 regulation, order, or other administrative action in effect under a source  
33 provision continues in effect under the corresponding title 53 provision.

34 (g) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or  
35 an offense committed under a source provision is deemed to have been taken  
36 or committed under the corresponding title 53 provision.

1     **SEC. 5. REPEALS.**

2         The following provisions of law are repealed, except with respect to rights  
3         and duties that matured, penalties that were incurred, or proceedings that  
4         were begun before the date of enactment of this Act:

## Schedule of Laws Repealed

Act	Section	United States Code Former Classification
Small Business Act (Public Law 85–536, § 2) .....	2(d)(1), (g), (i), (j) .....	15 U.S.C. 631(d)(1), (g), (i), (j).
	3 .....	15 U.S.C. 632.
	4 .....	15 U.S.C. 633.
	5 .....	15 U.S.C. 634.
	6 .....	15 U.S.C. 635.
	7 .....	15 U.S.C. 636.
	8 .....	15 U.S.C. 637.
	9 .....	15 U.S.C. 638.
	10 .....	15 U.S.C. 639.
	11 .....	15 U.S.C. 640.
	12 .....	15 U.S.C. 641.
	13 .....	15 U.S.C. 642.
	14 .....	15 U.S.C. 643.
	15 .....	15 U.S.C. 644.
	16 .....	15 U.S.C. 645.
	17 .....	15 U.S.C. 646.
	18 .....	15 U.S.C. 647.
	19 .....	15 U.S.C. 631.
	20(a)(1), (2), (4), (b) to (e), (j) .....	15 U.S.C. 631 note.
	21 .....	15 U.S.C. 648.
	22 .....	15 U.S.C. 649.
	23 .....	15 U.S.C. 650.
	24 .....	15 U.S.C. 651.
	25 .....	15 U.S.C. 652.
	26 .....	15 U.S.C. 653.
	27 .....	15 U.S.C. 654.
	28 .....	15 U.S.C. 655.
	29 .....	15 U.S.C. 656.
	30 .....	15 U.S.C. 657.
	31 .....	15 U.S.C. 657a.
	32 .....	15 U.S.C. 657b.
	33 .....	15 U.S.C. 657c.
	34 .....	15 U.S.C. 657d.
	35 .....	15 U.S.C. 657e.
	36 .....	15 U.S.C. 657f.
	37 .....	15 U.S.C. 657i.
	38 .....	15 U.S.C. 657j.
	39 .....	15 U.S.C. 657k.
	40 .....	15 U.S.C. 657l.
	41 .....	15 U.S.C. 657m.
	42 .....	15 U.S.C. 657n.
	43 .....	15 U.S.C. 657o.
	44 .....	15 U.S.C. 657q.
	45 .....	15 U.S.C. 631 note.
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